

No. 14390

United States
Court of Appeals
for the Ninth Circuit

See Vol. - 2908

UNITED STATES OF AMERICA; and CAR-
ROLL, HEDLUND & ASSOCIATES, INC.,
a Washington Corporation, Appellants,

vs.

RICHARD E. DOOLEY, and JEAN DOOLEY,
his wife, Appellees.

Transcript of Record

Appeal from the United States District Court for the Western
District of Washington, Northern Division

FILED
JUL 27 1954

PAUL P. O'BRIEN
CLERK

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for the Ninth Circuit

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[Clerk's Note: When deemed likely to be of important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Attorney for Appellees.

In the District Court of the United States for
Western Washington, Northern Division

No. 3386

RICHARD E. DOOLEY and JEAN DOOLEY,
his wife, Plaintiffs,

vs.

UNITED STATES OF AMERICA and CAR-
ROLL HEDLUND & ASSOCIATES, INC.,
a Washington corporation,
Defendants.

COMPLAINT

Plaintiffs, complaining of defendants, alleges:

I.

That jurisdiction herein is founded on a claim against the United States of America for money only on account of damage and personal injuries sustained by plaintiffs, caused by the negligence of an agency of the Government, to-wit: Federal Housing Administration, and its agent, Carroll Hedlund & Associates, Inc., a Washington corporation organized and authorized to do business under the laws of the State of Washington. This action arises under the Federal Tort Claims Act of August 2, 1946, Chapter 753, Title 4, Part 3, Section 410, 28 U.S.C., Section 931.

II.

That at all times herein mentioned Richard E.

Dooley and Jean Dooley have been and now are husband and wife, citizens of the United States and residents of King County, Washington.

III.

That at all times herein mentioned the Federal Housing Administration of the United States of America was and now is the owner and operator of Lake Burien Heights Apartments located at 1101 S. W. 139th, King County, Washington. That at all times herein mentioned the defendant, Carroll Hedlund & Associates, Inc., a Washington corporation, was and now is the managing agent of said Lake Burien Heights Apartments for and on behalf of the Federal Housing Administration of the United States of America.

IV.

That at all times herein mentioned the walks and driveways of the premises known as Lake Burien Heights Apartments, owned and operated by defendant, United States of America, were under the exclusive jurisdiction, control and supervision of the said defendant and its agent, Carroll Hedlund & Associates, Inc., a Washington corporation.

V.

That on June 1, 1952 the plaintiffs herein rented from the defendant United States of America and its agents aforementioned, an apartment in said Lake Burien Heights Apartments at a monthly rental of \$69.50 per month, being Apartment No.

101 located at 13710 - 12th S. W., King County, Washington.

VI.

That on or about the 5th day of November, 1952 at approximately 5:40 p.m., the plaintiff, Jean Dooley, left the apartment of the plaintiffs and walked on the walk provided for the tenants of said apartments toward a grocery store. That while proceeding on the said walk, which was under the jurisdiction, control and supervision of defendants, the plaintiff tripped over a wire approximately 12 inches high which had been erected by defendants to keep pedestrians from walking on the newly planted lawns along the edge of the sidewalk and which wire had become broken in places and had then curled up and was permitted by defendants to obstruct the sidewalk in a place in which defendants knew that plaintiff or the public would customarily and necessarily walk. That as a result of defendants' negligence, plaintiff Jean Dooley tripped over said wire and fell violently to the ground, severely injuring and damaging plaintiffs as hereinafter set forth. That at said time and place it was dark and there was no light on said sidewalk and the wire was invisible to the plaintiff. That prior to said time defendants had been notified of the defective condition of the wire, and said wire had been permitted to remain broken and to lie curled upon the sidewalk by the defendants.

VII.

That the defendants were negligent in permitting

said wire to remain on the sidewalk where defendants knew or in the exercise of reasonable care should have known that the tenants of said apartments walked and in the darkness would be subject to danger; and in failing to remove the hidden danger caused by the wire being permitted to remain on the sidewalk in a place where tenants of said apartments would be in the habit of walking, after having been notified that said dangerous obstruction existed upon said sidewalk; and in failing to furnish proper lighting to light the sidewalk leading into and out of the apartments operated and controlled by the defendants. That said negligence of the defendants was a direct and proximate concurring cause of all of plaintiff's injury and damage as hereinafter alleged.

VIII.

That as a direct and proximate result of the aforesaid negligence of the defendants, plaintiff, Jean Dooley, sustained fracture of the patella bone of her left leg, severe shock, and damage to her nervous system. That at the time of plaintiff's injuries plaintiff was then five weeks pregnant and since said injuries plaintiff has experienced continual symptoms of miscarriage. That as a result of said injuries plaintiff was hospitalized in the Maynard Hospital in the City of Seattle and her left limb was in a cast for four weeks. That plaintiff has been informed and therefore alleges that said injuries may cause an arthritis to develop in the knee joint of her left limb. That at the present

time .plaintiff has a scar extending five inches across her knee. That the pain, discomfort and stiffness in plaintiff's left limb was and now is disabling and on information and belief plaintiff alleges the pain, discomfort and stiffness in said left limb will continue for an indefinite period in the future. That all of said injuries and damages sustained by plaintiffs were suffered as a direct and proximate result of the negligence of the defendants and by reason thereof plaintiffs have been damaged in the sum of \$7,500.00.

IX.

That in addition to the foregoing damages, the following special damages were sustained by plaintiffs as a direct and proximate result of the negligence of the said defendants, to-wit: that plaintiff has become reasonably obligated for hospital and medical expenses in the sum of \$474.00. That plaintiff has been advised that she needs two therapy treatments per week for the next year. That said treatments would be at an expense of \$4.00 per treatment, or a total of \$416.00.

X.

That as a direct and proximate result of the negligence of the said defendants, plaintiff has been disabled and required services of a housekeeper to manage her home and her children during said disability at an expense of \$200.00.

XI.

That as a direct and proximate result of the aforesaid negligence of the defendants, and by

reason of the matters and things hereinbefore alleged, plaintiffs have been damaged in the total sum of \$8,590.00.

Wherefore, plaintiffs pray for judgment against the defendants, United States of America and Carroll Hedlund & Associates, Inc., a Washington corporation, and each of them, in the total sum of \$8,590.00, and for their costs and disbursements herein to be taxed.

DURHAM & GUIMONT,

/s/ By R. P. GUIMONT,

Attorneys for Plaintiffs.

Duly Verified.

[Endorsed]: Filed March 4, 1953.

[Title of District Court and Cause.]

ANSWER

Come now the defendants and answering the plaintiffs complaint herein, admit, deny and allege as follows:

I.

Answering paragraph II thereof, deny the same for lack of information sufficient to form a belief as to the truth or falsity of the allegations therein contained.

II.

Answering paragraphs VI, VII, VIII, IX, X and XI, deny the same and each and every allegation therein contained.

Further Answering the plaintiffs' complaint herein and by way of Affirmative Defense, defendants allege that if the plaintiffs were injured or damaged as alleged in the complaint herein, or at all, such injuries or damages were solely and proximately caused by the negligence of the plaintiffs, and in particular the defendants allege that the plaintiff was guilty of contributory negligence.

/s/ S. W. BRETHORST,

/s/ A. T. BATEMAN,

/s/ RICHARD C. REED,

Attorneys for Defendants.

Acknowledgment of Service attached.

[Endorsed]: Filed May 25, 1953.

[Title of District Court and Cause.]

REPLY

Come now the plaintiffs and for reply to the answer of the defendants herein, admit, deny and allege as follows:

I.

Replying to defendants' affirmative defense, plaintiffs deny each and every allegation therein contained.

Wherefore, having fully replied to the defendants' Answer and Affirmative Defense, plaintiffs

pray for judgment as set forth in their complaint on file herein.

DURHAM & GUIMONT,
/s/ By R. P. GUIMONT,
Attorneys for Plaintiffs.

Duly Verified.

Acknowledgment of Service attached.

[Endorsed]: Filed July 1, 1953.

[Title of District Court and Cause.]

DEFENDANTS' OBJECTIONS TO PLAINTIFFS' PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Come now the defendants, United States of America and Carroll, Hedlund & Associates, Inc., a Washington corporation, in aid of the Court and without waiving Rules 52 and 59, or any other, of the Federal Rules of Civil Procedure, and state defendants' disapproval and objection to the plaintiffs' proposed findings of fact and conclusions of law heretofore served herein, for and upon the following reasons:

(1) That plaintiffs' proposed findings of fact are incomplete;

(2) That plaintiffs' proposed findings of fact are not in accord with the findings orally announced by the Court in its oral decision;

(3) That plaintiffs' proposed findings of fact are not supported by the evidence adduced at the trial.

/s/ CHARLES P. MORIARTY,

/s/ By FRANCIS N. CUSHMAN,

Asst. U. S. Attorney,

Attorneys for defendant United
States of America,

/s/ A. T. BATEMAN,

Attorneys for defendant Carroll, Hedlund &
Associates, Inc., a Washington corporation.

Acknowledgment of Service attached.

[Endorsed]: Filed March 26, 1954.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Matter having come on duly and regularly for trial, and it appearing to the Court that a trial was had on March 10, 11, and 12, 1954, at which time the plaintiffs were present and represented by their counsel, R. P. Guimont, and the defendant, United States of America, represented by Francis N. Cushman, Assistant U. S. Attorney, and the defendant, Carroll, Hedlund & Associates, Inc., a Washington corporation, represented by Arthur T. Bateman of Brethorst, Fowler, Dewar, Bateman & Reed; and the Court having heard the testimony of witnesses on both sides and having

duly considered the same and the arguments of counsel, and being fully advised in the premises, makes the following:

Findings of Fact

I.

That this action was instituted by the plaintiffs against the United States of America pursuant to the provisions of Section 1346 (b), Title 28, U.S.C.A., and against Carroll, Hedlund & Associates, Inc., a Washington Corporation, its agent.

II.

That at all times herein mentioned Richard E. Dooley and Jean Dooley have been and now are husband and wife, citizens of the United States and residents of King County, Washington.

III.

That at all times mentioned herein, the Federal Housing Administration of the United States of America was and now is the owner and operator of Lake Burien Heights Apartments located at 1101 S. W. 139th, King County, Washington. That at all times herein mentioned the defendant, Carroll, Hedlund & Associates, Inc., a Washington corporation, was and now is the managing agent of said Lake Burien Heights Apartments for and on behalf of the Federal Housing Administration of the United States of America.

IV.

That at all times herein mentioned the walks and driveways of the premises known as Lake Burien Heights Apartments, owned and operated by defendant, United States of America, were under the exclusive jurisdiction, control and supervision of the said defendant and its agent, Carroll, Hedlund & Associates, Inc., a Washington corporation.

V.

That on June 1, 1952 the plaintiffs herein rented from the defendant United States of America and its agents aforementioned, an apartment in said Lake Burien Heights Apartments at a monthly rental of \$69.50 per month, being Apartment No. 101 located at 13710 - 12th S. W., King County, Washington.

VI.

That on or about the 5th day of November, 1952 at approximately 5:40 p.m. in the night time while proceeding on the sidewalk which was under the jurisdiction, control and supervision of defendants, the plaintiff, Jean Dooley, tripped over a wire which was disarranged from a wire barricade which had been erected by defendants to keep pedestrians from walking on the newly planted lawns and which wire had become broken down in places and had curled up and was permitted by defendants to obstruct the sidewalk in a place in which defendants knew that plaintiff would customarily and necessarily walk. That as a result of defendants' negligence in maintaining the wire barricade, plain-

tiff tripped over said wire and fell violently to the ground, severely injuring and damaging plaintiff, Jean Dooley.

VII.

That plaintiff, Jean Dooley, at all times mentioned herein exercised due and ordinary care for her own safety.

VIII.

That defendants were negligent in their failure to maintain the wire barricade in a reasonably safe condition and in permitting said wire to remain on the sidewalk where defendants knew or in the exercise of reasonable care should have known that the tenants of said apartments walked and in the darkness would be subject to danger; and in failing to remove the hidden danger caused by the wire being permitted to remain on the sidewalk in a place where tenants of said apartments would be in the habit of walking, after having knowledge or in the exercise of reasonable care should have had knowledge that said dangerous obstruction existed upon said sidewalk. That said negligence of the defendants was a direct and proximate concurring cause of all of plaintiff's injury and damage.

IX.

That all of plaintiff's injuries and damages were the direct and proximate result of the negligence of the defendants and by reason thereof plaintiffs have been damaged, in respect to all their general and special damages herein, in the sum of \$5,000.00.

X.

That 20% of the amount of Judgment herein allowed is a reasonable attorney fee to be allowed plaintiffs' attorneys herein, and plaintiffs have agreed to said allowance; said allowance to be payable out of said sum of \$5,000.00.

Done in Open Court this 26th day of March, 1954.

/s/ JOHN C. BOWEN,
United States District Judge.

From the foregoing Findings of Fact, the Court makes the following:

Conclusions of Law

I.

That plaintiffs, Richard E. Dooley and Jean Dooley, his wife, should be granted judgment against defendants, United States of America and Carroll, Hedlund & Associates, Inc., a Washington corporation, and each and all of them, for the sum of \$5,000.00, together with their costs and disbursements herein incurred.

Done in Open Court this 26th day of March, 1954.

/s/ JOHN C. BOWEN,
United States District Judge.

Presented and approved by:

/s/ R. P. GUIMONT,
Attorney for Plaintiffs.

gether with their costs and disbursements herein incurred, hereby taxed in the sum of \$39.04.

Done in Open Court this 26th day of March, 1954.

/s/ JOHN C. BOWEN,

United States District Judge

Presented and approved by:

/s/ R. P. GUIMONT,

Attorney for Plaintiffs.

Approved as to form by, exceptions reserved:

/s/ F. N. CUSHMAN,

Assistant U. S. Attorney.

BRETHORST, FOWLER, DEWAR,
BATEMAN & REED,

/s/ A. L. BATEMAN,

Attorneys for Defendants.

[Endorsed]: Filed and entered March 26, 1954.

[Title of District Court and Cause.]

MOTION FOR AMENDMENT OF FINDINGS

The defendants, United States of America and Carroll, Hedlund & Associates, Inc., a Washington corporation, move the Court that the Findings of Fact heretofore entered herein be amended as follows:

Proposed Amendments to Findings

Finding paragraph VI: Cancel Finding Paragraph VI and substitute therefor the following:

“That on the 5th day of November, 1952, at

shortly after 5:50 p.m., which was during the hours of darkness, the plaintiff Jean Dooley, while walking hurriedly along one of the sidewalks in the area of the Lake Burien Heights Apartment project site, which sidewalk was one of those maintained by the defendants for the common use of tenants, and which sidewalk is more particularly shown and indicated in the various and several exhibits on file herein, the said plaintiff tripped and fell as the result of coming in contact with a strand of wire which was lying curled and loose on or over the surface of said sidewalk. That said wire was in such a position and condition as the result of having been loosened, cut or broken from a wire barricade which had been erected by the defendants along the north side of said walk for the purpose of keeping pedestrians, including tenants of the apartment project, from walking on the newly planted lawn area adjacent to the walk."

Finding paragraph VII: Cancel Finding Paragraph VII and substitute therefor the following:

"That at said time and place the plaintiff Jean Dooley failed to exercise due or ordinary care for her own safety."

Finding paragraph VIII: Cancel Finding paragraph VIII and substitute therefor the following:

"That the presence or condition of said wire on said sidewalk was not shown to have been brought to the attention of the defendants, or either of them, nor was it shown how long said wire was there."

Finding paragraph IX: Cancel Finding paragraph IX and substitute therefor the following:

“That the injuries sustained by the plaintiff Jean Dooley and the damages sustained by the plaintiffs were not the result of nor proximately caused by any negligence of the defendants, or either of them, but were proximately caused by the failure of the plaintiff Jean Dooley to use ordinary care for her own safety.”

The defendants further move the Court that the Conclusions of Law and the Judgment heretofore entered herein be amended accordingly.

This motion is based upon Rule 52 (b) of the Rules of Civil Procedure.

/s/ F. N. CUSHMAN,

Assistant U.S. Attorney

/s/ A. T. BATEMAN,

Of Brethorst, Fowler, Dewar, Bateman & Reed,
Attorneys for Defendants.

Acknowledgment of Service attached.

[Endorsed]: Filed April 2, 1954.

[Title of District Court and Cause.]

MOTION FOR NEW TRIAL

Defendants, United States of America and Carroll, Hedlund & Associates, Inc., a Washington corporation, move the Court that the judgment entered herein be vacated and set aside and that a new trial be granted on the following grounds and causes

materially affecting the substantial rights of the defendants:

(a) Insufficiency of the evidence, as follows:

(1) The evidence is insufficient to show that the defendants, or either of them, were negligent in maintaining the wire barricade.

(2) The evidence is insufficient to show that the plaintiff Jean Dooley tripped as the result of any negligence on the part of the defendants, or either of them.

(3) The evidence is insufficient to show that the defendants failed to maintain said barricade in a reasonably safe condition.

(4) The evidence is insufficient to show that the defendants, or either of them, permitted the said wire to remain on the sidewalk.

(5) The evidence is insufficient to show that the defendants, or either of them, permitted said wire to remain on the said sidewalk or failed to remove the same after defendants, or either of them, knew, or after the defendants, or either of them, should have known of the presence or existence of said wire on said sidewalk.

(6) That the evidence is insufficient to show that any negligence on the part of the defendants, or either of them, was a direct, proximate or concurring cause of all or any of the plaintiffs' injury or damage.

(b) Error in law occurring at the trial, as follows:

(1) The Court erred in finding that the defendants, or either of them, were negligent in maintaining the said barricade and that the negligence of

the defendants was a proximate or concurring cause of the plaintiffs' injury.

(2) The Court erred in concluding that the plaintiffs were entitled to judgment against the defendants, or either of them.

(c) The Court erred in entering judgment for the plaintiffs.

/s/ F. N. CUSHMAN,

Assistant U.S. Attorney

/s/ A. T. BATEMAN,

Of Brethorst, Fowler, Dewar, Bateman & Reed,
Attorneys for Defendants.

Acknowledgment of Service attached.

[Endorsed]: Filed April 2, 1954.

[Title of District Court and Cause.]

ORDER DENYING MOTION FOR NEW TRIAL
AND ORDER DENYING MOTION FOR
AMENDMENT OF FINDINGS

This matter came regularly on for hearing in open Court on April 12, 1954, on the defendants' motion for a new trial and defendants' motion for amendment of findings, the plaintiffs being present in Court by their attorney, R. P. Guimont, and the defendants, United States of America and Carroll, Hedlund & Associates, being present in court by their attorneys, Leonard Ware, Assistant United States Attorney, and A. T. Bateman of Brethorst,

Fowler, Dewar, Bateman & Reed, and the Court having heard argument of counsel and being fully advised in the premises, it is here and now ordered:

(1) That the defendants' motion for a new trial be and the same is hereby denied;

(2) That the defendants' motion for amendment of findings be and the same is hereby denied, to all of which defendants except and their exceptions are allowed.

Done in open Court this 13th day of April, 1954.

/s/ JOHN C. BOWEN,
U.S. District Judge

Approved as to form:

/s/ R. P. GUITMONT,
Attorney for Plaintiffs.

Presented by with exceptions reserved:

/s/ F. N. CUSHMAN,
Assistant U.S. Attorney
/s/ A. T. BATEMAN,
Attorneys for Defendants.

[Endorsed]: Filed April 13, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Notice is hereby given that United States of America and Carroll, Hedlund & Associates, Inc., a Washington corporation, defendants above named,

hereby appeal to the United States Court of Appeals for the Ninth Circuit from the judgment entered in this action on the 26th day of March, 1954.

/s/ A. T. BATEMAN,
Of Brethorst, Fowler, Dewar,
Bateman & Reed

/s/ F. N. CUSHMAN,
Assistant U.S. Attorney,
Attorneys for Defendants.

Acknowledgment of Service attached.

[Endorsed]: Filed May 10, 1954.

[Title of District Court and Cause.]

APPELLANTS' DESIGNATION OF CON- TENTS OF RECORD ON APPEAL

Come now the appellants, United States of America and Carroll, Hedlund & Associates, Inc., a Washington corporation, defendants above named, and designate for inclusion in the record on appeal herein to the United States Court of Appeals for the Ninth Circuit the complete record of proceedings and evidence in the above action, including:

- (1) The following pleadings: Plaintiffs' Complaint, defendants' Answer, plaintiffs' Reply; and defendants' objections to plaintiffs' proposed findings;
- (2) Findings of Fact and Conclusions of Law;
- (3) The Judgment;

(4) Defendants' Motion for New Trial, defendants' Motion for Amendment of Findings of Fact;

(5) Order Denying Motion for New Trial and Order Denying Amendment of Findings;

(6) Defendants' Notice of Appeal;

(7) Appellants' Bond for Costs on Appeal;

(8) Appellants' Designation of Contents of Record on Appeal;

(9) Court Reporter's Transcript of the Evidence and Proceedings herein, two copies of which Transcript are filed herewith.

Respectfully submitted,

/s/ A. T. BATEMAN,

Of Brethorst, Fowler, Dewar,
Bateman & Reed

/s/ F. N. CUSHMAN,

Assistant U.S. Attorney,
Attorneys for Appellants,
Defendants above named.

Acknowledgment of Service attached.

[Endorsed]: Filed May 25, 1954.

[Title of District Court and Cause.]

STATEMENT OF POINTS ON APPEAL OF APPELLANTS

On appeal herein to the United States Court of Appeals for the Ninth Circuit the appellants, United States of America and Carroll, Hedlund & Asso-

ciates, Inc., a Washington corporation, defendants above named, rely on the following points:

1. The United States District Court erred in denying the motion of said appellants to dismiss the plaintiffs' complaint for want of evidence sufficient to sustain a cause of action against the defendants, or either of them, made at the close of plaintiffs' case, and after plaintiffs had rested. (Transcript of Proceedings at Trial, page 161).

2. The United States District Court erred in making the following Findings of Fact:

“VI.

“That on or about the 5th day of November, 1952, at approximately 5:40 p.m. in the night time while proceeding on the sidewalk which was under the jurisdiction, control and supervision of defendants, the plaintiff, Jean Dooley, tripped over a wire which was disarranged from a wire barricade which had been erected by defendants to keep pedestrians from walking on the newly planted lawns and which wire had become broken down in places and had curled up and was permitted by defendants to obstruct the sidewalk in a place in which defendants knew that plaintiff would customarily and necessarily walk. That as a result of defendants' negligence in maintaining the wire barricade, plaintiff tripped over said wire and fell violently to the ground, severely injuring and damaging plaintiff, Jean Dooley.”

“VII.

“That plaintiff, Jean Dooley, at all times men-

tioned herein “exercised due and ordinary care for her own safety.

“VIII.

“That the defendants were negligent in their failure to maintain the wire barricade in a reasonably safe condition and in permitting said wire to remain on the sidewalk where defendants knew or in the exercise of reasonable care should have known that the tenants of said apartments walked and in the darkness would be subject to danger; and in failing to remove the hidden danger caused by the wire being permitted to remain on the sidewalk in a place where tenants of said apartments would be in the habit of walking, after having knowledge or in the exercise of reasonable care should have had knowledge that said dangerous obstruction existed upon said sidewalk. That said negligence of the defendants was a direct and proximate concurring cause of all of plaintiff’s injury and damage.

“IX.

“That all of plaintiff’s injuries and damages were the direct and proximate result of the negligence of the defendants and by reason thereof plaintiffs have been damaged in the sum of \$5,000.00.”

That said Findings are clearly erroneous and that said Findings are contrary to the evidence and the evidence was insufficient to show, and there was an entire absence of evidence to show:

- (a) That the defendants, or either of them, were negligent in maintaining the said wire barricade;
- (b) That the plaintiff, Jean Dooley, tripped over

said wire as the result of any negligence on the part of the defendants, or either of them;

(c) That the defendants, or either of them, failed to maintain said wire barricade in a reasonably safe condition, or that the defendants, or either of them, permitted said wire to remain on the sidewalk;

(d) That the defendants, or either of them, permitted said wire to remain on the said sidewalk or failed to remove the same after the defendants, or either of them, knew or after defendants, or either of them, should have known of the presence or existence of said wire on said sidewalk;

(e) That the defendants, or either of them, knew of the presence or existence of said wire on the sidewalk;

(f) That the defendants, or either of them, should have known of the existence of said wire upon the sidewalk;

(g) That the defendants, or either of them, were negligent or that any negligence of the defendants, or either of them, was a direct, proximate or concurring cause of plaintiffs' injury or damage;

(h) That the plaintiff Jean Dooley exercised reasonable care for her own safety.

3. That under the evidence the United States District Court erred in entering its Conclusions of Law that the plaintiffs were entitled to judgment against the defendants, or either of them.

4. That under the evidence the United States District Court erred in entering judgment for the plaintiffs and against the defendants, or either of them.

5. That the United States District Court erred in denying defendants' Motion for New Trial.

6. That the United States District Court erred in denying defendants' Motion for Amendment of Findings, Conclusions and Judgment.

/s/ A. T. BATEMAN,
Of Brethorst, Fowler, Dewar,
Bateman & Reed.

/s/ F. N. CUSHMAN,
Assistant U.S. Attorney
Attorneys for Appellants,
defendants above named.

[Endorsed]: Filed June 3, 1954.

[Title of District Court and Cause.]

APPELLANTS' SUPPLEMENTAL DESIGNA-
TION OF CONTENTS OF RECORD
ON APPEAL

Come now the appellants, United States of America and Carroll, Hedlund & Associates, Inc., a Washington corporation, defendants above named, and designate for inclusion in the record on appeal herein to the United States Court of Appeals for the Ninth Circuit, supplemental to appellants' designation of contents of record on appeal heretofore filed, the following:

1. All exhibits admitted in evidence at the trial herein;

2. Appellants' Supplemental Designation of Contents of Record on Appeal;

3. Order Directing Transmission of Original Exhibits.

Respectfully submitted,

/s/ A. T. BATEMAN,
Of Brethorst, Fowler, Dewar,
Bateman & Reed

/s/ F. N. CUSHMAN,
Assistant U.S. Attorney,
Attorneys for Appellants,
defendants above named.

Acknowledgment of Service attached.

[Endorsed]: Filed June 9, 1954.

[Title of District Court and Cause.]

ORDER DIRECTING TRANSMISSION OF ORIGINAL EXHIBITS

This matter coming on for hearing in open Court on the application of the above named defendants for an order directing transmission of original exhibits to the United States Court of Appeals for the Ninth Circuit on appeal herein, and it appearing to the Court that the defendants, appellants on appeal, have filed herewith Supplemental Designation of Contents of Record on Appeal designating for inclusion in the record on appeal herein all of the

exhibits admitted in evidence at the trial, and it appearing that certain thereof are not readily copiable into the record;

Now, therefore, the Clerk of the above-entitled Court be, and he is hereby, ordered to transmit to the United States Court of Appeals for the Ninth Circuit not less than ten (10) days prior to the hearing of the above cause on appeal all of the exhibits admitted in evidence herein at the trial not readily copiable into the record on appeal.

Done in open Court this 10th day of June, 1954.

/s/ JOHN C. BOWEN,
Judge.

Presented by:

/s/ A. T. BATEMAN,
/s/ F. N. CUSHMAN

Acknowledgment of Service attached.

[Endorsed]: Filed June 10, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

United States of America,
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the United States District Court for the Western District of Washington, do hereby certify that pursuant to the provisions of Subdivision 1 of Rule 10 as amended of the United States Court of Appeals for the Ninth

Circuit, and Rule 75 (o) of the Federal Rules of Civil Procedure, I am transmitting herewith the following original documents, being all of the original documents and papers in the file dealing with the above cause, as the record on appeal from the judgment filed March 26, 1954 to the United States Court of Appeals for the Ninth Circuit, said papers being identified as follows:

1. Complaint, filed March 4, 1953.
2. Praecipe for Process, filed March 4, 1953.
3. Summons, with Marshal's Return thereon, filed May 6, 1953.
4. Appearance of United States Attorney, filed April 28, 1953.
5. Notice of Appearance of deft. Carroll, Hedlund & Associates, Inc., filed May 19, 1953.
6. Answer of defendants, filed May 25, 1953.
7. Reply, filed July 1, 1953.
8. Deposition of Jean Dooley, filed Feb. 26, 1954.
9. Praecipe for subpoena, Greenstreet, filed Mar. 2, 1954.
10. Marshal's Return on Subpoena, Greenstreet, filed March 3, 1954.
11. Excerpt from testimony of Dr. Paul E. Ruuska, filed March 10, 1954.
12. Trial Memorandum of defendants, filed Mar. 10, 1954.
13. Defendants' Objections to Plaintiffs' Proposed Findings of Fact and Conclusions of Law, filed March 26, 1954.
14. Findings of Fact and Conclusions of Law, filed March 26, 1954.

15. Judgment for plaintiffs, filed March 26, 1954.

16. Cost Bill, filed March 26, 1954.

17. Motion for Amendment of Findings, filed April 2, 1954.

18. Motion for New Trial, filed April 2, 1954.

19. Order Denying Motion for New Trial and Amendment of Findings, filed April 13, 1954.

20. Notice of Appeal, filed May 10, 1954.

21. Bond for Costs on Appeal, filed May 10, 1954.

22. Bond for Costs on Appeal, filed May 19, 1954.

23. Court Reporter's Transcript of Proceedings at Trial, filed May 25, 1954.

24. Appellant's Designation of Contents of Record on Appeal, filed May 25, 1954.

25. Statement of Points on Appeal, filed June 3, 1954.

26. Appellants' Supplemental Designation, filed June 9, 1954.

27. Order Transmitting original admitted exhibits, filed June 10, 1954. Plaintiff's Exhibits 1, 2, 3, and 5 to 8 inclusive; and Defendants' Exhibits A-1 to A-16 inclusive.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office by or on behalf of the appellant for preparation of the record on appeal in this cause, to-wit: Filing fee, Notice of Appeal, \$5.00; and that said amount has been paid to me by counsel for appellant.

Witness my hand and official seal this 10th day of June, 1954.

[Seal] MILLARD P. THOMAS,
 Clerk,
/s/ By TRUMAN EGGER,
 Chief Deputy. ,

In the District Court of the United States, Western District of Washington, Northern Division

No. 3386

RICHARD E. DOOLEY and JEAN DOOLEY,
his wife, Plaintiffs,
vs.

UNITED STATES OF AMERICA and CARROLL, HEDLUND & ASSOCIATES, INC.,
a Washington corporation,
Defendants.

TRANSCRIPT OF PROCEEDINGS AT TRIAL

Transcript of proceedings at trial had in the above-entitled and numbered cause commencing at 10:00 o'clock a.m., on Wednesday, March 10, 1954, at Seattle, Washington, before The Honorable John C. Bowen, United States District Judge.

Appearances: R. Pat Guimont, Esq., of Durham & Guimont, 1702 Smith Tower, Seattle, Washington, appeared for Plaintiffs. Arthur T. Bateman, Esq., of Brethorst, Fowler, Dewar, Bateman &

Reed, 1710 Hoge Building, Seattle, Washington, appeared for Defendant Carroll, Hedlund & Associates, Inc., a Washington corporation; and Francis N. Cushman, Esq., Assistant United States Attorney, United States Court House, Seattle, Washington, appeared for Defendant United States of America. [1*]

The Court: I ask, are parties and counsel ready to proceed with the trial of Dooley and wife versus United States of America; and Carroll, Hedlund & Associates, Inc., a Washington corporation?

Mr. Guimont: We are, your Honor.

Mr. Bateman: Defendants are ready, your Honor. Mr. Belcher, through the process of notification and re-notification, was missed, and he will be down just as soon as he can get here, but he asked that we proceed.

The Court: Very well, and do you agree to take care of whatever interest might be needful?

Mr. Bateman: Yes, your Honor, we are jointly associated in the defense of the case.

The Court: How long do counsel estimate the trial will take?

Mr. Guimont: Well, I would anticipate, your Honor, approximately a day. I hope that our case will be concluded in about three hours' time.

The Court: Mr. Bateman, would you make an estimate?

Mr. Bateman: I suggest, then, your Honor, that we should be through by tomorrow afternoon.

* Page numbering appearing at bottom of page of original Reporter's Transcript of Record.

I think my case will take about four or five hours to put on.

The Court: That sounds like at least two [7] days will be substantially consumed. In view of that, I wish first to see what we can do to obviate unnecessary time-consuming work in the case.

Have counsel met together with a view to trying to accomplish the results which might have been accomplished by formal pre-trial procedures under the rules providing for that?

Mr. Guimont: Yes, your Honor. I believe we have some agreements.

The Court: Have counsel tried to clear away the work that might be incident to bringing into the case proper exhibits?

Mr. Guimont: We have with respect to some of the medical expense, your Honor, and also with respect to some of the physical facts.

The Court: Do you know approximately how many physical exhibits the plaintiffs will wish to introduce in evidence?

Mr. Guimont: I would say eight or nine all told.

The Court: Consisting of what subject matter?

Mr. Guimont: Our exhibits will be billed, expenses of medical treatment, and also some pictures of the area involved.

The Court: Now, I am certain that those things [8] could be dealt with and should have been before this time in a final way.

(Francis N. Cushman, Assistant United States Attorney, at this time appeared on behalf of the Defendant United States of America.)

The Court: Mr. Bateman, what have you?

Mr. Bateman: May I say first, your Honor, we have agreed with counsel that counsel might introduce his medical bills without objection or without presenting proof or testimony as to reasonableness of them?

The Court: What about pictures?

Mr. Bateman: The pictures, the same, your Honor. We have stipulated the pictures might be introduced without the necessity of furnishing the photographer who took them.

The Court: That is what I mean.

Now, with respect to the defendants' exhibits, Mr. Bateman?

Mr. Bateman: We have three scale drawings that are pertinent, your Honor, which Counsel, I believe, has stipulated that we may introduce without producing the testimony of the engineer who drew them. It shows the apartment house project site that is involved here and then enlargements of that, showing the more limited area that is involved. [9]

We have pictures that we will offer in evidence of that site, and general area.

The Court: You mean photographs?

Mr. Bateman: Yes.

The Court: In addition to those drawings?

Mr. Bateman: Yes.

The Court: Do you have those drawings and pictures in mind?

Mr. Guimont: I do, your Honor.

The Court: Any objection?

Mr. Guimont: No objection.

The Court: What other kind of physical evidence would you seek to introduce?

Mr. Bateman: I believe, your Honor, that is the essence of it.

The Court: Then, I believe counsel has accomplished what the Court was talking about, and I hope that is true.

Then, is there anything else about physical exhibits that you think should be mentioned now so as to save time?

Mr. Bateman: We have agreed and heretofore have conferred about it that it may be stipulated that the Federal Housing Administrator, an Agent of the United States of America, is the owner of the Lake Burien [10] Apartments, and the real estate comprising that site which will be shown on one of the exhibits, which is a material element of the plaintiffs' case that we have agreed to stipulate to, and no proof need be offered of that fact.

The Court: Is that satisfactory?

Mr. Guimont: That is satisfactory. We also agreed that the agent, Carroll, Hedlund & Associates, are operating it for the Government.

The Court: Is that true?

Mr. Bateman: That is correct, your Honor.

Mr. Guimont: And we further have stipulated

that it won't be necessary for them to produce the Weather Bureau people to prove the time of daylight involved.

The Court: Do you wish the Court to understand that counsel on both sides have agreed that no such proof will be necessary, that there will be no excuse as to the hours of daylight on that day?

Mr. Guimont: That is right.

Mr. Bateman: Yes. I have the certificate from the Weather Bureau which I will physically introduce in evidence that will take care of that.

The Court: Do you have any objection to that?

Mr. Guimont: No objection.

The Court: Is there anything else, Mr. Guimont, that has not already been stated, physical evidence especially?

Mr. Guimont: We also agreed that counsel could introduce from the Lighting Division the facts concerning the lights being on at the time involved in this accident. Do you have that?

Mr. Bateman: I found, your Honor, in my investigation of that, that there is no way to present that except through calling a witness. There is no physical record of that having been made. The testimony will be very brief, however.

The Court: Anything else you think of? I am indulging these few moments with the hope of clearing away all of the unnecessary conflicts in the views of counsel in the case which sometimes in trials necessarily take up time.

Mr. Guimont: I believe that is about what we have agreed to.

I have put in a call for a doctor to appear at eleven o'clock.

The Court: As to doctors on both sides, the Court will try, if it is possible—we do not guarantee—but the Court will try to accommodate the [12] doctors when they get here. That relates to the doctors on both sides.

Mr. Bateman: I believe, your Honor, actually the pleadings are short in this case. The issues are rather confined, and I think that counsel and I have actually stipulated to everything that it is possible to stipulate to and during the course of the trial, should others matters arise, I, for one, will certainly be quick to alleviate any unnecessary delay.

The Court: Very well. May I interrupt then to ask Mr. Cushman,—he is the attorney for the United States of America, one of the defendants in this case—will he have any physical evidence like photographs or documents or maps or drawings or anything of that sort to offer, other than what Mr. Bateman and Mr. Guimont have been mentioning?

Mr. Cushman: No, your Honor, and I do not plan at the moment to take an active part in the case. Mr. Bateman will be handling it.

The Court: Is it your understanding that whatever Mr. Bateman says or does in this case, if pertinent to the position of the United States, may be taken and deemed by the Court to have been said and done on behalf of the United States as

well as on [13] behalf of Carroll, Hedlund & Associates, Inc.?

Mr. Cushman: Yes, your Honor.

Mr. Bateman: That is our understanding, your Honor. We arranged that.

The Court: Very well.

Is there anything else that should be cleared away?

If that is all, Mr. Guimont, it is in order for the plaintiffs to make plaintiffs' opening statement of what they think the truth will be in this case. May I remind counsel that if you wish to assist this Court—and I am sure you do—what we need and what we may appropriately receive under that heading is a brief, narrative outline by Counsel of what Counsel thinks the Court will hear in the way of testimony from the witness stand or will be advised of in the form of physical exhibits. Try carefully to avoid any comment on the effect of any evidence or on the weight of the personality or reputation or testimony of a witness.

Just relate in a very brief narrative outline what you think the evidence will be before the Court, and the same opportunity will be given counsel for the defendant at the proper time.

At this time, we will hear plaintiffs' [14] opening statement.

(Mr. Guimont opened the case to the Court in behalf of the plaintiffs.)

The Court: I will hear now or later, according to counsel's preference, the defendants' opening statement.

Mr. Bateman: May it please the Court, the defendants would like to reserve their opening statement.

However, at this time, may I introduce Mr. George Johnston of Carroll, Hedlund at counsel table, and Mr. Kelvin Greenstreet of the Federal Housing Administration, who are at the counsel table?

The Court: You may be seated.

Are there any other details before proceeding with the taking of the testimony?

If not, plaintiffs may call their first witness, or otherwise proceed.

Mr. Guimont: I will call Mrs. Rebar. [15]

PHYLLIS REBAR

upon being called as a witness for and on behalf of the plaintiffs, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Guimont): Will you state your name, please?

A. My name is Mrs. James Rebar.

Q. What is your own given name?

A. Phyllis.

Q. Where do you live now?

A. I live at 720 Southwest 146th.

Q. And where were you living in November of 1952?

A. I was living at Lake Burien Heights.

(Testimony of Phyllis Rebar.)

Q. And were you a neighbor at that time of Mrs. Dooley and Mr. Dooley?

A. Yes, I was.

Q. What apartment number were you living in?

A. I lived in apartment 104.

Q. And at what address?

A. At 13710-12th Avenue Southwest.

Q. Was that the same address that the Dooleys had?

A. Yes, it was. [16]

Q. Now, were they in apartment No. 101?

A. Yes.

Q. How long had you lived there up until November of '52?

A. Well, I moved there on March 10 of '52, so that would be about six months or not quite.

Q. And you were sitting there when the Dooleys moved in?

A. Yes, I was.

Q. Now, did you have occasion to observe the way in which the grounds were kept during the time you were there?

A. Yes, I did.

Q. How were they kept? Did they have a gardener, in other words?

A. Oh, yes, they had a gardener. They were planting this lawn, and they had these wires with the stakes planted in the ground to keep the children and the—well, just generally speaking—people off the lawn, so that it would grow properly.

Q. Now, what did you see or observe prior to the incident that Mrs. Dooley had there?

A. Well, I had seen very many times the wires being down, and the stakes being down, too, at

(Testimony of Phyllis Rebar.)

different places of the project where I lived. By looking [17] out the window, or maybe going to the store, I had noticed that.

Q. Were they repaired from time to time?

A. Well, at times, they were, and at other times, they were not.

Q. Did you ever see anyone repairing them?

A. I think I did, once. Maybe it was more than once, but I remember especially once.

Q. With reference to the time Mrs. Dooley had her trouble, when was it that you saw it repaired?

A. Well, I believe it was before it happened, the accident happened, but like I say, I have seen the wires down because I have come back from the store and have had to be fairly careful to walk in the center of the sidewalk so I wouldn't trip over the wire myself.

Mr. Bateman: May it please the Court, if I may interrupt? I move that the testimony of the witness be stricken unless it is shown that this is the area or the wire which is involved in this suit. I believe this project covered a large area, and that counsel should confine himself to that particular area.

The Court: Is there any reason why the Court should not sustain that objection and grant that request?

Mr. Guimont: Well, I feel, your Honor, that [18] just generally the condition of the premises is in issue, and the knowledge that the defendant

(Testimony of Phyllis Rebar.)

may have had or should have had can be brought out in this way.

The Court: I think the way it has arisen, the Court will not take the trouble to strike it.

I will say that if you can show it had nothing to do with this action, the Court will certainly not regard it and that may be a situation somewhat different than might be found if the fact-trier was a jury instead of the Court.

I assure you that I am not going to pay any attention to evidence that relates to some condition that had nothing to do with this accident.

If you can show on cross examination or otherwise by clarification that it is immaterial, I shall disregard it. Be careful, though, Mr. Guimont, in view of the objection now made, in the future questions to confine them to the conditions that related to this accident, not something around a large apartment house area, because we all know that in some of these housing projects, they cover acres and acres of ground. What might happen on one side of the property might not be at all pertinent to what occurred on the other side.

Mr. Guimont: That is true. [19]

Q. (By Mr. Guimont): Now, Mrs. Rebar, with reference to the particular area where your apartment was, what did you observe about the fencing or wire obstructions?

A. Well, just like I said, I had seen the wire down, and some other times I have seen it up, not in—well, in different spots.

(Testimony of Phyllis Rebar.)

Q. Was that surrounding or right in the immediate vicinity of the area of your apartment?

A. Yes.

Q. Now, what occurred the evening that Mrs. Dooley sustained an injury? Do you recall that evening?

A. Well, that evening, it was—I believe it was after six—Mr. Dooley knocked at my door or rung the bell, and I answered the door, and he asked me if my Doctor was open in the evenings, or if he could have the 'phone number, and I gave it to him, and I went over with him to see what the trouble was. I asked him, and he said Jean had an accident, and I went over to their apartment, which was right around the corner, and saw Jean sitting on the davenport with her foot propped up, and I could tell that she was in pain. I believe, at the time, I asked her how it happened, and I was so enthused about her leg that that is all I thought of at the time was just wires, how it [20] happened, that she stumbled over wires.

Mr. Bateman: I move the answer be stricken.

The Court: Yes. It may be stricken. I think you had better direct the witness by question and answer.

Q. (By Mr. Guimont): Now, you went into the Dooleys' apartment, then, did you?

A. Yes, I did.

Q. And you observed Mrs. Dooley?

A. Yes.

(Testimony of Phyllis Rebar.)

Q. And what was her general appearance at that time?

A. Well, she was in pain, by the look on her face.

Mr. Bateman: Conclusion of the witness.

The Court: Objection overruled and motion denied.

Q. (By Mr. Guimont): What was her general appearance at that time? Did you observe her leg?

A. Yes, I did.

Q. And what did you observe about it?

A. Well, I saw that her leg was propped up and——'[21]

Q. What was the color of it?

The Court: Did you see the leg about the knee, or did you only see the leg that was exposed below the normal position of her skirt?

The Witness: Well, I can't answer either way.

The Court: Very well. She can't answer. Ask her another question.

Q. (By Mr. Guimont): Now, did you get a Doctor for her, or do anything about it?

A. Well, when I was over there, I believe that at that time, Mr. Dooley called my Doctor. It was his day off, but I believe he called at his home, and, well, I think—and then he called another Doctor after that, because my Doctor was unable to assist, I believe.

I can't remember exactly, because I don't want to say anything that I am not sure of.

(Testimony of Phyllis Rebar.)

Q. Well, did you stay in the apartment there with her, or do anything for her then?

A. Well, I went upstairs to the apartment house to find someone that could help Mr. Dooley—to help Mr. Dooley take Jean out to the car to the hospital, because I figured he would need help. I asked first, and so I went upstairs to another apartment in the same [22] apartment house to get a man.

Q. And did you get him?

A. Yes, I did.

Q. And then, did you return?

A. Yes. I went back to my apartment. I had children.

Q. Did you see them take Mrs. Dooley to the car?

A. Yes. I looked out the window, and I saw Jean—I believe she was on his back. I believe that is how it was.

Q. Did they carry her out? A. Oh, yes.

Q. Two men?

A. Well, I think that—what I can remember—I believe Jean had her arms over his neck, I believe, and I can't remember what the other fellow was doing. I can't remember that, but I know that I saw them going out, because I looked out the window.

Q. Who looked after their children? Did the Dooleys have children there?

A. Yes. They had two little girls.

(Testimony of Phyllis Rebar.)

Q. And who looked after them when they went to the hospital?

A. Well, I can't remember. I don't know if the [23] mother-in-law was there yet, but I believe that one of the neighbors watched until the mother-in-law came or the mother-in-law came shortly after. I can't remember, but I believe one of the neighbors watched until the mother-in-law came.

The Court: Will you state, yes or no, as to whether you know the approximate age of Mrs. Dooley, Mrs. Jean Dooley, do you or not know the approximate age of Mrs. Dooley? Answer yes or no. You don't have to answer to something you don't know.

The Witness: I am not sure, no.

The Court: You may ask another question. Is she a younger person, or an older person, from your point of view?

The Witness: Mrs. Richard Dooley?

The Court: No, Mrs. Jean Dooley, the plaintiff in this action.

The Witness: I believe I am older than she is.

The Court: And approximately how old are you?

The Witness: I shall soon be 27.

The Court: And you think she is younger than you, is that your thought?

The Witness: A matter of months.

The Court: Very well, you may inquire. [24]

Q. (By Mr. Guimont): Then did you have occasion, Mrs. Rebar, to see Mrs. Dooley when she returned to the housing project?

(Testimony of Phyllis Rebar.)

A. Yes, I did.

Q. When did she return?

A. Well, I believe it was around ten days or—well, around that time, after——

Q. And did you call on her then?

A. Yes, I did.

Q. And what was her appearance then?

A. Well, she was unable to do anything.

Q. Did she have anything on her leg?

A. She had a cast on her leg.

Q. And how far did the cast extend?

A. I can't remember rightly but I believe it was—it seemed like it was up quite far. Like I say, it has been quite a long time ago, and I would hate to say, one way or the other.

Q. Now, was someone living with her at the time? A. Yes.

Q. Who was that?

A. Well, her mother-in-law stayed there and watched the children, and cared for her.

Q. Now, do you recall when the cast was finally removed? A. No, I don't.

Q. Prior to this accident, did Mrs. Dooley do all of her household tasks herself? A. Yes.

Q. And her washing? Are there washing facilities there? A. Yes, there is.

Q. And after the accident, did you see her doing any of that?

A. After the accident?

Q. Yes.

A. Well, not directly after, I don't know exactly

(Testimony of Phyllis Rebar.)

when it was, but I think I saw her once, but I can't remember. It was not directly after, because I know she wasn't able to get downstairs, but I know that her mother-in-law did the washing for her, because I used to see her in the basement.

Q. Now, did you observe Mrs. Dooley's walk? How she walked after this accident?

A. Well, after she had the cast off?

Q. Well, yes, after she had the cast off. Did you observe her walking?

A. Well, stiff-legged. I mean, she didn't put too much weight on that foot. [26]

Q. And you left in January, did you?

A. In January of 1954, this year, on New Year's Day.

Q. You moved from there?

A. Yes, I did.

Q. And up to that time, did you notice her walk and gait?

A. Well, I haven't seen too much of Jean recently after I left.

Q. I mean, before you left, did you observe?

A. Before I left?

Q. Yes.

A. Oh, yes, she walked sort of, I guess, with a limp.

Mr. Guimont: I believe that will be all.

The Court: You may cross examine.

Cross Examination

Q. (By Mr. Bateman): Mrs. Rebar, you moved

(Testimony of Phyllis Rebar.)

from the apartment there in January of '54, did you not? A. Yes.

Q. However, Mr. and Mrs. Dooley moved out of your building in June of '53, did they not?

A. I believe it was around that time. I don't know exactly when, but they moved before I did to another [27] apartment house.

Q. So, after that, you didn't really see her very much, did you?

A. Occasionally, I did, yes. She used to bring the children over once in a while, very seldom, but I did.

Q. Did you say "very seldom"?

A. Well, I can't say just how often. I saw her maybe—the visit wasn't made to me, but to someone else.

Q. To someone else in the building?

A. Yes.

Q. You would see her just casually?

A. That is right.

Q. Did she carry her baby with her?

A. She had a stroller.

Q. Did you ever see her carrying her baby?

A. No.

Q. Did you ever see her take the child upstairs?

A. No. Pardon me. You mean upstairs, in the other apartment house?

Q. Yes. A. No.

Q. Did you ever see her take the child upstairs in the building in which you are living?

A. Oh, I see what you mean. I never saw [28]

(Testimony of Phyllis Rebar.)

her take the baby upstairs in our apartment house, but the one opposite from us—I can't remember, think—I don't know if I actually saw her take him up, but I think she did.

Q. Well, there are stairs up into all of those apartment buildings, are there not? A. Yes.

Q. And there is a second story in all of those apartment buildings, is there not?

A. Two stories.

Q. And did Mrs. Dooley live on the second floor of the building in which you were living?

A. First floor.

Q. Do you know what floor she lived on in one of the other buildings now?

A. The first floor.

Q. And there are steps down to the basement, are there not, in those buildings? A. Yes.

Q. And up until June of '53, Mrs. Dooley was carrying her child, wasn't she?

A. Well, I don't know how soon after she moved that I saw her. Maybe I would see her if I was looking out the window checking my children. I may have seen her with the baby in the buggy. I can't remember. I can't [29] say for sure, because I don't remember.

Q. From the time of this accident in November of 1952, until June of 1953, Mrs. Dooley was carrying her child, I mean the child that was just born in June of 1953,—that so?

A. When I saw Mrs. Dooley, when I did see her, she had, I believe, a buggy with the baby.

(Testimony of Phyllis Rebar.)

Q. She wasn't carrying her unborn child in a buggy?

A. Well, that is what I mean. I can't remember. I don't remember. That is why I would rather not say something I don't know.

The Court: The way to dispose of it, if I may make a suggestion, is, if you know the answer, proceed to state it as best you can. If you feel that you do not know the answer, with sufficient certainty to make a statement of fact about it, just say: "I do not recall", or something to that effect. That will save time, and also you are expending unnecessary effort.

Q. (By Mr. Bateman): Did you talk with her?

A. Yes.

Q. On the evening that this accident occurred, Mrs. Rebar, did you talk with Mrs. Dooley herself?

A. Yes. [30]

Q. What was the general subject of your conversation with her?

A. I believe I asked her how it happened.

Q. You talked about how the accident occurred?

A. Well, when you see someone sitting there when they had an accident, naturally you are curious to know how it happened.

Q. So you talked to her personally about how it occurred? Is your answer "yes" to that?

A. Yes, I believe I did.

Q. She was not unconscious then?

A. No.

(Testimony of Phyllis Rebar.)

Q. She was sitting on the davenport, did you say? A. I believe it was the davenport.

Q. Was she covered with blankets or anything of that kind?

A. I can't say, because I don't remember.

Q. Was there anyone else present besides you and Mr. Dooley?

A. I believe one of the other neighbors.

Q. Do you know who that was?

A. Yes, I do.

Q. Who? [31]

A. Mrs. Joy Skewes.

Mr. Bateman: No further questions, Your Honor.

Mr. Guimont: That will be all.

May this witness be excused, Your Honor?

Mr. Bateman: Yes.

Mr. Guimont: She has some young children.

The Court: Mrs. Rebar may be excused, and she may go on about her own business, if that is her wish.

(Witness excused)

Mr. Guimont: Now, I will call Mrs. Dooley.

MRS. DOROTHY DOOLEY

upon being called as a witness for and on behalf of the Plaintiffs, and upon being first duly sworn testified as follows:

Direct Examination

Q. (By Mr. Guimont): Would you state your name, Mrs. Dooley?

(Testimony of Mrs. Dorothy Dooley.)

A. Dorothy Dooley, Mrs. Dorothy Dooley.

Q. And what is your relation to Jean Dooley?

A. I am her mother-in-law.

Q. And Richard Dooley is your son? [32]

A. My oldest son.

Q. Where do you live, Mrs. Dooley?

A. I was living at 1327 Valley when the accident occurred. I am now living at 4618 West Marginal Way.

Q. And what is your occupation?

A. Saleslady and demonstrator.

Q. And were you employed in November of 1952?

A. Yes, by Frederick & Nelson, demonstrating housewares.

Q. And what were your earnings from that employment? A. Fifty dollars a week.

Q. And do you recall the location of your son and his wife's home?

A. Very well. I was there on the average of two to three times every week in the evening.

Q. And prior to Jean's accident, did you call on them regularly?

A. Quite frequently, because they had a younger baby, and I used to go out to take the older one out for air and exercise, to carry.

Q. Now, was there anything wrong physically with Mrs. Dooley, Jean Dooley, prior to this accident? A. Not to my knowledge.

Q. Did you have occasion to go out there the evening that Mrs. Dooley was injured?

A. I had just gotten home from work, and I

(Testimony of Mrs. Dorothy Dooley.)

was having dinner, and I thought that I would call, and my son said: "Hang up the telephone. Jean just broke her knee." Immediately I hung up, of course. There was a lady living with me at the time. I started dressing, and I got out as fast as I could get out, to see how bad the accident was.

Q. And when you got out there, Jean was still there?

A. She had gone to the hospital, and this neighbor,—I believe their name is Skewes—anyway, we all call her "Joy"—she was with the children when I got there.

Q. And then, when you got there, did you take over? A. It was the only thing to do.

Q. What did you do about your job?

A. I waited until the following morning, and called the Medical Center at Frederick & Nelson and told them that I could not come back because my daughter-in-law was in the hospital and somebody had to take care of the children.

Q. How long did you stay and look after the children? [34]

A. I was there, day and night, from November 5 in the evening until December 18, and after that, I commuted for a few days back and forth, but I was there steady every night from the 5th of November to the 18th of December.

Q. And did you maintain your own housing at the same time?

A. I kept my apartment up for some months, for six weeks, until I was able to move it.

(Testimony of Mrs. Dorothy Dooley.)

Q. Did you discuss with Mr. and Mrs. Dooley your expense in the matter?

A. I had a natural expense, yes, of keeping up my apartment and light and telephone.

The Court: Mrs. Dooley, the question was, did you discuss that?

The Witness: Yes.

Q. (By Mr. Guimont): And did you agree on any figure that you felt they should pay you for your staying with the children?

A. They said they were willing to pay whatever was reasonable.

Q. And what did you agree was reasonable?

A. We decided on \$25.00 per week.

Q. For how long? [35]

A. A week.

Q. And how many weeks were you there?

A. I believe it was six weeks from November 5 until December 18.

Q. Now, have they paid you the money you agreed upon? A. No, sir.

Q. Did you expect to be paid? A. Yes.

Q. Do you feel that is a reasonable amount?

A. I do.

Q. Mrs. Dooley, when did Jean come home?

A. I didn't write it on the calendar, but it was either the 9th or 10th day, following the accident.

Q. Then, when she came home, was she able to assist in the care of the family?

A. Not at all.

(Testimony of Mrs. Dorothy Dooley.)

Q. What was her appearance when she came home?

A. Well, she was quite pale, and very, very nervous through medicine she was taking for pain.

Q. And did she make complaint at that time to you about her condition? A. Yes.

Q. What were those complaints generally?

A. That she couldn't stand it, whether she was laying down or trying to sit up, that the pain was intolerable, and it was just driving her out of her mind, and she took some sort of pills that the Doctor gave her to relieve that pain, and took them consistently.

Q. Now, did she have a cast on? A. Yes.

Q. And how long do you recall having seen her with the cast?

A. I believe that she went back four weeks following her return to see the Doctor. Whether he removed all of the cast at that time, I can't say. I think he removed part of it, but it was at least four weeks afterwards.

The Court: After she returned?

The Witness: Yes.

Q. (By Mr. Guimont): And how often did she return to the Doctor during that four weeks' period?

A. I can't answer that accurately, because I didn't write it down. I know that she was in touch with him all the time, and she went back several times, but whether it was two times or three times, I couldn't make a statement.

Q. Now, did you notice any improvement in her

(Testimony of Mrs. Dorothy Dooley.)

condition, her nervousness, and the like, while you were living at the home?

A. Her nerves were very, very bad, and after my six weeks there, I used to go up practically every day because I felt being on her——

The Court: Now, Mrs. Dooley, you are not answering the question. Read the question.

(Last question read by the reporter.)

A. No.

Q. (By Mr. Guimont): After the time you stayed in the home, did you return and see Mrs. Dooley from time to time? A. Yes.

Q. And about how often did you return?

A. Almost every day, until Christmastime.

Q. And during that period of time, what was Mrs. Dooley's condition?

A. She was very nervous, and very exhausted from being on her feet in the care that she had to take care of the children.

Q. How was her leg at that time? Did you notice? A. It was quite swollen.

Q. Where was the swelling?

A. In her kneecap. [38]

Q. And the cast was off at that time, was it?

A. Yes.

Q. Did you thereafter visit, also?

A. Yes.

Q. And about how often did you see the Dooleys from that time on?

A. After Christmas, I went out about two or —about every other day—to take care of the wash-

(Testimony of Mrs. Dorothy Dooley.)

ing and help with the washing, because I didn't return to steady employment until about the 15th of January.

Q. And then after you returned to steady employment, did you visit there?

A. I went out in the mornings. My employment was late afternoon and evening. I used to go out there in the mornings.

Q. And how often, is what I am trying to get at.

A. About twice a week after I returned back to work.

Q. And has that relationship continued up to now? A. Always has, yes.

Q. What is the appearance of her leg? Have you seen her leg? A. Yes.

Q. What is the appearance of it?

A. There is quite a bad scar on the knee, and her ankle used to swell at times periodically.

Q. Have you observed that swelling, yourself?

A. Yes.

Q. And when is the latest that you observed the swelling?

A. The latest that I observed it being swollen was in the summer.

Q. This last summer?

A. The summer months, yes, when she was on her feet a long time, it would swell.

Q. How did she walk during all of the time immediately after and on up until now?

A. With difficulty, because her knee was stiff.

Q. And have you observed her walking recently?

(Testimony of Mrs. Dorothy Dooley.)

A. Yes.

Q. Is there any improvement in the walk?

A. There is some improvement, but it is stiff when she goes up and down steps. She has to walk with care.

Q. Prior to the incident when she was injured, had you been out to visit there often? A. Yes.

Q. And did you have occasion to observe the grounds immediately surrounding their apartment?

A. Yes.

Q. What have you observed about that prior to this [40] accident, particularly with reference to the date of the accident, which I believe was on November 5 of 1952?

A. The wires had been put up after the lawns were in, but they were loose many times, laying loosely on the ground, and the stakes partly leaning over, and the wires sometimes touch the ground, depending on which way the stakes were pushed.

Mr. Guimont: I would ask to have this identified.

The Court: The Clerk will mark the exhibit as Plaintiffs' Exhibit No. 1 for identification.

(Photograph marked Plaintiffs' Exhibit 1 for identification.)

The Court: I wish Counsel would do their inspecting of that exhibit and expedite the matter. I understood there was no particular concern about the exhibit, and I will ask the counsel offering to state what it purports to show or ask the witness what it purports to show.

(Testimony of Mrs. Dorothy Dooley.)

Q. (By Mr. Guimont): Does that exhibit No. 1 disclose the area involved where you have been informed Mrs. Dooley fell? A. Yes.

Q. And with reference to that particular area, Mrs. Dooley, did you at any time prior to the occasion of Jean's fall, did you observe that condition of the wire at that location?

A. There was a loose wire at that telephone pole that I curled up on occasions because Kathy, the little girl, she used to run to the sandbox and play, and I was afraid the end of the wire would hurt her, or would hit her in the eye, perhaps, and I used to curl it up next to the pole.

Q. How many times did you do that, if you recall?

A. Upon more than several occasions, because whenever I took her to the sandbox, I was afraid of the wire, and I used to push it up next to the pole, or push it out of the way.

Q. And did you find that wire on occasion across the sidewalk?

A. Dangling in the corner of the walk there, yes.

Q. Now, where is the sandbox with relation to that telephone pole that is pictured there?

A. Across the walk from the pole.

Q. Do you know how wide that walk would be?

A. I never had occasion to measure the walk, but I would say the average width—probably three feet. I [42] am sure it is about the regular size of a walk.

Q. Now, with reference to the Dooley apart-

(Testimony of Mrs. Dorothy Dooley.)

ment, about how far is that telephone pole and that area from their apartment? A. In distance?

Q. In distance?

A. It is hard to approximate, because these poles are at the rear of the building, the corner of the walk.

Q. Well, from the rear of their building, 50 feet, 25 feet, 75 feet?

A. Probably—I hate to make an answer—from their corner of their building, probably 50 feet, 45 or 50 feet.

Q. About the length of this room, would you say?

A. Approximately. There are two apartments in that side. That is a hard question.

Q. Would you be able to tell us approximately when you first observed that wire was dangling or loose?

A. It was in September and October, because they were very nice warm days, and I used to go out and take the little girl out, as I said before, for her exercise at the sandbox and playing, so it was in September and October. If the weather was nice, on nice days, I took her out, and those were the days I seen them quite often.

Q. At that time, was there a planting in the yard of grass?

A. The lawns were all put in in the summer.

Q. Had the grass come up at that time?

A. It had very good growth.

(Testimony of Mrs. Dorothy Dooley.)

Q. Who used the lawn? Did they permit anyone to use the lawns?

A. The wires were put up to keep people off the lawn, but the children ran across them repeatedly. All the children played inside and outside when I was out there.

Q. Were there a lot of children in the vicinity?

A. Quite a number.

Q. And is that in the vicinity of the Dooleys' apartment?

A. Immediately around their apartment.

Q. How many apartment buildings were in the project as far as you know?

A. I would be unable to answer that. It is a large——

Q. Were there more than two?

A. There were quite a good many. I wouldn't [44] be able to say how many. There were dozens.

Q. Dozens? A. I would say so.

Mr. Guimont: I believe that will be all.

Cross Examination

Q. (By Mr. Bateman): Mrs. Dooley, your daughter-in-law was pregnant from November, and shortly before, until June, when her baby was born, is that not true? A. Yes.

Q. Pardon me?

A. She was pregnant, yes, until June.

Q. And she also had two younger children, did she, at that time? A. Yes.

Q. How old were those young children?

(Testimony of Mrs. Dorothy Dooley.)

A. Their ages then or now?

Q. Their ages at the time of her fall.

A. Jean hurt her knee on November 5, and Kathy was two on November 30. Maureen was one year old in January. Maureen was nine months old, approximately, nine months old.

Q. So, at the time then that you went out there at the home to stay with her, she had two children, one nine months old and one two years old? [45]

A. She wasn't two years old yet, almost two years old.

Q. And she was pregnant? A. Yes.

The Court: Just a moment. Will you read the last two questions and answers?

(Last two questions and answers read by reporter.)

The Court: January of what year, Mrs. Dooley?

The Witness: The year of the accident, 1952.

That would make Maureen one year old on January, '53.

Q. (By Mr. Bateman): Then, to be sure I understand you, at the time that you went out there on the evening of November 5, Mr. and Mrs. Dooley, your son and daughter-in-law, then had two children, one aged nine months, and the other aged two years, less a few days? A. Yes.

Q. And Mrs. Dooley was in the hospital for approximately ten days and returned home?

A. Either nine or ten days, yes.

Q. And you stayed with her then at the home there from November 5 until December 17?

(Testimony of Mrs. Dorothy Dooley.)

A. I believe it was the 18th, but whatever——

Q. 17th or 18th? A. Yes.

Q. And after that, you left?

A. I returned every day.

Q. You left and returned to your own apartment? A. Yes.

Q. Coming back then daily until about Christmastime? A. Up until Christmas.

Q. And after Christmas, you came back every other day or so?

A. Yes, because my employment was from four in the afternoon.

Q. Now, during that period then from the time of this accident until June, Mrs. Dooley in addition to having these two small children to care for, was pregnant, is that correct? A. That is right.

Q. Was her husband living there in the apartment at that time?

A. He was living with her except for the times he was out of town working.

Q. What was his work?

A. He is an iron worker.

Q. Was he out of town a good deal?

A. Quite often.

Q. So, substantially a good deal of time during that period, she was able to take care of these two small babies, and in addition, be under the handicap of being pregnant, is that correct?

A. He wasn't out of town after the accident. His out-of-town work came in the summer. Following the accident, he wasn't out of town.

(Testimony of Mrs. Dorothy Dooley.)

Q. At all?

A. I can't give you a specific number of days.

Q. He was out of town some of the time?

A. No. He was—I don't believe that he was out of town for at least three months or four months after the accident.

Q. But you don't know?

A. There was a short period that he was away, but I can't tell whether that was before or after.

The Court: Mrs. Dooley, state, if you know, what Mrs. Jean Dooley's approximate age was at the time of the accident.

The Witness: 26, I believe.

The Court: You may inquire. [48]

Q. (By Mr. Bateman): Was there any reason why you left the apartment there on December 18 when you did?

A. I had some unpaid bills that hadn't been taken care of. I don't have a checking account. I had to take care of a little business of my own, and I returned as often as possible, to help her.

Q. You didn't live there any longer?

A. Not permanently.

Q. Do you have just the one child, Mrs. Dooley?

A. I have two sons.

Q. When you were carrying those infants, did your ankles ever swell?

A. My feet. Being on my feet was quite hard work. It was very hard on me. In fact, I had to go to my Doctor afterwards.

Q. In this apartment project, there is a large

(Testimony of Mrs. Dorothy Dooley.)

amount of lawn area, is there not? A. Yes.

Q. You would describe it as a very extensive lawn planting? A. I would say so.

Q. And during the occasions while that planting was being done, and for the months thereafter, were those areas all perfected with similar fences to this kind that [49] was along the sidewalk where your daughter is supposed to have fallen?

A. Immediately around her apartment there were wires on stakes loosely.

I can't say the whole area, because I didn't go over the whole area.

Q. Did you ever report to the management of the apartment project there, the distance of this wire you have referred to on this telephone pole?

A. I didn't live there, so I didn't make any report. I did report to the people around there, because I fell over them once, myself.

Q. Do you know who you reported that to?

A. Pardon?

Q. Do you know the names of any of the people you mentioned that to?

A. To Mrs. Rebar and to Mrs. Joy Skewes I mentioned it many times, because they were loose and very easy to fall over.

Q. Did you mention it to your daughter-in-law?

A. Many times.

Mr. Bateman: No further questions.

The Court: Any further questions of this witness?

Mr. Guimont: I want to ask her a few questions.

(Testimony of Mrs. Dorothy Dooley.)

The Court: Well, I thought we would be finished in a moment. Those connected with this case are excused about ten minutes.

(Recess.)

The Court: Will you resume the witness stand for further interrogation, Mrs. Dooley?

Mr. Guimont: Your Honor, I have a Doctor who is present now.

The Court: I will then accommodate the Doctor at this time.

DR. PAUL E. RUUSKA

upon being called as a witness for and on behalf of the Plaintiffs, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Guimont): Will you state your name, Doctor?

A. Paul E. Ruuska.

Q. Doctor, where do you reside?

A. Mercer Island.

Q. And do you have offices in the City of Seattle? A. I do. [51]

Q. Where are those offices?

A. In the Medical-Dental Building.

Q. Doctor, are you duly and regularly licensed to practice medicine and surgery in the State of Washington? A. Yes, I am.

Q. Where did you receive your medical education, Doctor?

Mr. Bateman: We will admit the Doctor's qualifications.

(Testimony of Dr. Paul E. Russka.)

Mr. Guimont: Thank you.

Q. (By Mr. Guimont): Where did you receive your medical education?

A. I went to the University of Oregon Medical School from 1936 until 1940 and received my M.D. degree in 1940.

I interned for one year at the Good Samaritan Hospital in Portland, Oregon. I then went into the Service and spent a little over four and one-half years in the Service in a General Hospital as an orthopedic surgeon.

Following discharge from the Service in 1946, I spent one year at the Children's Orthopedic Hospital in Seattle, Washington. [52]

Following that, in 1947 I went to the New York Orthopedic Hospital for a Junior Fellowship, and in 1948 I had the Senior Fellowship at the New York Orthopedic Hospital.

Q. Did you have any specialty, Doctor, in your profession?

A. Yes, I do only orthopedic surgery, and I have qualified for the American Board of Orthopedic Surgery in 1950.

Q. And, Doctor, did you have occasion to see and treat Jean Dooley? A. Yes, I did.

Q. Of this City? A. Yes.

Q. And when did you first treat Mrs. Dooley, and for what?

A. I first saw Mrs. Dooley at the Maynard Hospital on November 5. She was referred to me by

(Testimony of Dr. Paul E. Russka.)

another physician, and at that time, she had sustained an injury to her knee.

The Court: That was November 5, is that right?

The Witness: I believe that is right.

The Court: What year?

The Witness: 1952. [53]

The Court: You may continue.

A. (Continued): And at the time that I saw her, she had an obvious injury in the region of the knee.

Q. Was that the left knee, Doctor?

A. Yes, the left knee. There was marked swelling and considerable tenderness, and shortly after I saw her, the X-rays of the left knee were made in Maynard Hospital, and on reviewing those, there was a transverse fracture of the kneecap on the left side.

Q. And, Doctor, what was the next step you took?

A. Because of the marked swelling and discomfort at the time, I applied a small cast just to make her comfortable for the time being, and we scheduled her for an operation, in which we were to replace the kneecap fragments into good position, and we scheduled this operation for November 8th, 1952, and performed it on that date.

Q. What was the reason, Doctor, for the three-day delay?

A. Mostly to allow the swelling to subside and allow the patient to recover more or less from the

(Testimony of Dr. Paul E. Russka.)

shock of the injury, and adequately prepare her for the surgery.

Q. What was her condition, mentally and physically, at that time?

A. Well, attendant to the fracture, of course, [54] was considerable pain. The patient was somewhat apprehensive, was very nervous, and it was felt best to give her something to more or less console her nerves, and, as I say, prepare her for the operation.

Q. Did you have a history of what had precipitated this condition? A. The injury?

Q. Yes.

A. Well, the history that I obtained was that Mrs. Dooley was running and tripped over a wire, and as she described it, fell through the air and struck on the point of the knee, causing the injury, and immediately following that, was brought to the hospital.

Q. And the condition which you treated her for and found, did you attribute that to that type of injury that she related she had?

A. Yes, sir.

Q. Doctor, what was the surgical procedure following on the 8th of November?

A. Upon November 8th, I made an incision about six inches in length, and made a dissection down to the kneecap. I then split the fibres of the heavy tendon lengthwise and peeled them back, and saw the broken area of the bone. On opening this space, considerable blood could be seen in the knee joint,

(Testimony of Dr. Paul E. Russka.)

and this was thoroughly [55] washed out of the knee joint proper.

Following this, we were able to line up the fragments in good shape, and I then placed two drill holes through the lower segment and two drill holes to the top fragment, and wound a heavy piece of suture material through all four of the drill holes and then tied them up securely, holding the fracture fragments in place.

Following that, the structures superficial to the kneecap were then again sutured into their proper place, and a dressing was placed over the knee.

Following this, a cast which extended from the toes to the upper third of the groin was put on, holding the knee in very slight flexion.

Q. Now, how long, approximately, was she hospitalized, Doctor?

A. She was hospitalized about nine days, in that vicinity.

Q. And then, did she visit at your office?

A. Yes. I saw her on frequent occasions after that. I saw her on November 22, December 6th, at which time I removed the cast.

On December 15, there was a little area of the wound right in the middle of the wound that was—what we say—granulating. You might say it showed a [56] proud flesh.

The Court: Will you wait just a moment? Please read the last answer.

(Last answer read by the reporter.)

The Court: You may resume the answer if I

(Testimony of Dr. Paul E. Russka.)

have interrupted you, Doctor, and if not, you may ask another question.

A. (Continuing): This was treated by a dressing. Then, on December 15, I referred Mrs. Dooley to the office of Mrs. Erma Myers, who is a physical therapist, for the purpose of heat treatments, massage, and exercises to the knee, which are important for the recovery of the knee motion following this type of an injury. I have since then seen Mrs. Dooley on five occasions, and the last time was on March 8th, 1954.

Q. That was just before this trial?

A. Yes, sir.

Q. Now, Doctor, what would the swelling indicate to you?

A. When? At the time of the injury?

Q. At the time of the injury.

A. Well, it indicates contusion to the area that was injured, and, as we almost always expect, blood in the knee joint. [57]

Q. Now, what complaints did she make to you at that time, when you first saw her, that is November 5, 1952?

A. Extreme pain, and extreme apprehension.

Q. Was she able to give you a calm story of the matter?

A. Well, no, I wouldn't say it was calm. She was having terrific pain when I first saw her, and any slight motion, of course, was painful, and there is considerable muscle spasm when the joint is injured.

(Testimony of Dr. Paul E. Russka.)

Q. Does that corroborate her complaint of pain, spasm? A. Oh, yes.

Q. What did you observe about her general condition subsequent to your operation on her knee?

A. Her general physical?

Q. Yes, her mental and physical.

A. Well, at the time that I first saw Mrs. Dooley, she was referred by Dr. Layton, who is an obstetrician, and Dr. Layton informed me that Mrs. Dooley was pregnant, and she carried through the pregnancy following the knee injury.

On the several occasions that I saw her, she was considerably nervous, was very apprehensive even about my feeling the knee, apprehensive about bending [58] it, and quite nervous throughout the course of this injury.

Q. This nervousness, and the like, was there any connection between that and the fall that she had, do you think?

A. Yes. A certain amount of this nervousness was precipitated by this injury, which was a rather severe injury.

Q. Now, with reference to the severity of the injury, how would you compare this injury that you treated her for, for instance, with a fracture of the tibia, or one of the bones in the leg?

A. Well, that would depend. A fracture of the tibia that would enter the knee joint would be an extremely serious injury. On the other hand, a fracture of the tibia which would occur, we would say, in the middle of the shaft would not involve the

(Testimony of Dr. Paul E. Russka.)

joint, and as happens in this case, the knee joint is the largest joint in the body and the most complicated joint in the body, and, therefore, there is considerably more to deal with from the standpoint of treating it and getting the knee to function afterward.

Q. Would a good alignment of the patella—that is the joint involved, the bone involved in the fracture, is it not? [59]

A. Yes, sir.

Q. Would a good alignment of that necessarily be a permanent recovery in an area such as the knee?

A. Well, a good alignment of the patella is practically mandatory, and that is why I elected to open it, so that I could see what I was doing. If you don't get good alignment, it causes a roughening on the under surface of the kneecap which, of course, glides over the joint, actually is in continuity with the knee joint proper, and any roughness there will lead to after effects.

Q. Now, was there any evidence of other injury to the area besides the fracture itself?

A. Only the bleeding into the knee joint and the contusion of the tissue in front of the kneecap.

Q. Would there be tissue injury and damage in that area? A. Soft tissue injury, yes.

Q. And is that disabling, Doctor?

A. That would be more or less of a temporary thing, in my opinion.

Q. What, Doctor, is your prognostication of the

(Testimony of Dr. Paul E. Russka.)

permanency of this injury that Mrs. Dooley has sustained, if any?

A. Well, I think that she has some permanent disability in this instance, because of the fracture entering the joint. I think there is a probability that she will have aching in the joint, some swelling. It is extremely hazardous to say what she is going to have twenty years from now, but I believe that she will develop a so-called arthritis in that knee sooner than she would in a normal knee.

We know definitely that there is such a thing as traumatic arthritis when a break occurs into a joint.

Q. And that is the type of break this is?

A. That is the type of break this is, and that is what I would have reason to expect.

Q. Doctor, in the last examination you made of Mrs. Dooley, did you take an x-ray picture to show the alignment of the knee?

A. Yes. I took an x-ray picture. I took one on December 15, which revealed to me the position of the bones.

Mr. Guimont: May we have that marked, please?

The Witness: There are two of them here. One doesn't contribute much because it is a front view. Do you want that, too?

Mr. Guimont: Well, I believe just the one that you would like to comment on.

(X-ray marked Plaintiffs' Exhibit 2 for identification.) [61]

The Court: We will have to take the recess at noon, having in mind the witness' convenience.

(Testimony of Dr. Paul E. Russka.)

Mr. Guimont: I am about finished.

The Court: I mentioned that so that Counsel can have in mind the witness' convenience.

Q. (By Mr. Guimont): What is significant, Doctor, with reference to that x-ray picture, Exhibit 2?

A. This is a lateral radiograph of the left knee, taken on December 15, on Mrs. Dooley, and it reveals some mottling of the kneecap, some absorption of bone, which we always expect in a fracture, but it reveals the fracture line going across the bone, and there is perhaps just a very slight offset at the site of the fracture on the under side of the kneecap.

The Court: Repeat the date of the taking of that x-ray.

The Witness: December 15, 1952.

Q. (By Mr. Guimont): That was subsequent by a month to your original operation?

A. Yes, about five weeks.

Q. Now, that roughening, will that probably cause some continued difficulty in the future? [62]

A. That is the only thing that would cause the difficulty, that is, the roughening on the under side of the kneecap.

Q. Doctor, did you bring with you your statement of your charges that were made for treating Mrs. Dooley?

A. I have a copy. I believe this is a copy of my bill.

(Testimony of Dr. Paul E. Russka.)

Mr. Guimont: I will ask that that be marked and introduced.

(Doctor's bill marked Plaintiffs' Exhibit 3 for identification.)

Q. (By Mr. Guimont): What are those charges, Doctor?

The Court: It is customary to let the opposing counsel see specifically what each exhibit is, and if it appears that he is familiar with it——

Mr. Bateman: We have no objections to the entry of that, Your Honor.

A. The charges up until——

Q. Just the full amount. Is it \$240?

A. \$225.50.

Q. And then did you have a charge for your last——

A. Then there is—we use a standard King County charge for the x-rays. I can't tell you what that would be. I don't have that right now.

The Court: Is it in addition to that exhibit?

The Witness: Yes. It would be in the vicinity of perhaps ten dollars.

Mr. Guimont: We offer that.

Mr. Bateman: I have no objection.

The Court: Plaintiffs' Exhibit 3 is admitted.

(Plaintiffs' Exhibit 3 received in evidence.)

Q. (By Mr. Guimont): Those are reasonable charges, are they not, Doctor? A. Yes, sir.

Mr. Guimont: I believe that is all.

The Court: You may cross-examine.

(Testimony of Dr. Paul E. Russka.)

Cross Examination

Q. (By Mr. Bateman): Doctor, you described from the x-ray the roughening as very slight on the under side of the patella?

A. The deformity is slight.

Q. In other words, you would consider that to be a very excellent result, would you not? [64]

A. I think I did a pretty good job, yes.

Q. And it is so, is it not, that many people sustain such injuries to the kneecap resulting in a greater roughening or offset than is present here, without ever acquiring any arthritic joint?

A. I find that difficult to answer. I feel that when a break occurs into a joint, and if it would be more rough than this, I would expect trouble.

Q. If it was rougher than this? A. Yes.

Q. But now, is it not a fact that in many cases, frequently no such trouble ever develops?

A. No, because from kneecaps, we have lots of mischief, and if we don't get them well into position, we simply have to scoop the whole kneecap out. I think in this instance, we are talking about a very particular type of fracture. That is why I would like to clarify these things.

The Court: Just try to give your information as related to this condition that is here present, and do not spend too much time comparing it with others which might involve a different situation.

Q. (By Mr. Bateman): Doctor, assuming you are finished, it is true, is it not, that a result such as this, in a fracture of this type in many instances

(Testimony of Dr. Paul E. Russka.)

will [65] result in no future difficulty with the knee joint of an arthritic nature? A. It can.

Q. When you stated that you had last examined Mrs. Dooley on March 8, 1954, that is just the first part of this month, that was preparatory to this trial, was it not, for your appearance here?

A. Yes, it is a follow-up.

Q. When was the last time prior to that that you had seen her?

A. The last time prior to that was in August, 1953.

Q. And prior to that time? A. April, 1953.

Q. And those visits were just follow-ups, were they? A. Yes, sir.

Q. Was there present any arthritis in the knee-joint when you examined her on March 8th?

A. On March 8th, when I examined her and moved the kneecap over the knee joint proper, there was some crepitus or grinding, a grating sensation, under the kneecap. There was some limitation of motion. The patient could flex the knee down to 70 degrees, which represents some limitation of motion.

The Court: What is normal?

The Witness: That depends to a certain extent. For a young lady her age, I would expect it to go down to approximately 50 degrees normally. There was one-half inch of atrophy or wasting of the muscles of the left thigh as compared with the right thigh.

Q. Now, those conditions are simply indicative of the fact that she does not need the full flexion—

(Testimony of Dr. Paul E. Russka.)

I believe you referred to that—of the knee in her normal daily life, is that not so, rather than any malcondition of the muscles?

A. Yes. I am citing here—I possibly have a little more than 70 degrees, but I think that she can get along with that amount.

Q. You stated that you had talked to and taken a history of how this occurred from Mrs. Dooley?

A. Yes, sir.

Q. Did you give a report of that to Mr. Guimont here?

A. Yes. I wrote Mr. Guimont a letter.

Q. Did she state to you in giving her history that she had injured her knee when she was running from her home, and she tripped across a wire stretched tightly between two stakes?

A. I believe that is what was told. [67]

Mr. Bateman: No further questions.

Redirect Examination

Q. (By Mr. Guimont): When did you take the history down, Doctor?

A. The history that I obtained from Mrs. Dooley was entered into the hospital record.

Q. That would be the night that she was admitted there?

A. Yes. I customarily make a note. Now, I don't remember whether I did or not.

Q. And is that an informal resume?

A. Very informal.

(Testimony of Dr. Paul E. Russka.)

Q. You just find out approximately how it did occur? A. How, when and where, roughly.

Q. Did you recall her telling you that she fell across a stretched wire?

A. That is what I said in my letter here. I don't remember whether it was a wire.

Q. Did you get the details of it? Did you ask her the details?

A. No, I didn't bother any further about the details than that.

Q. Just put that down. Did you dictate that to someone else, Doctor? [68]

A. No. I wrote it in the hospital record.

Q. And when she told you that, what was her condition at that time?

I mean, when she told you the history how was she——

The Court: (Interposing) Don't you think you have gone into that? He spoke about her being nervous.

Mr. Guimont: I appreciate that.

Q. (By Mr. Guimont): Counsel inquired of the comparison—he inquired, “Isn't it true that some people with more serious gratings in their kneecap and more serious roughening sometimes don't have any trouble in the future, is that right?”

I believe you said—I don't think you answered the question. Do they, or don't they have difficulty in the future?

A. It is hard to tell. Frequently a patient will have a rather catastrophic accident and come out of

(Testimony of Dr. Paul E. Russka.)

it feeling rather good. I am not smart enough to answer that question. I think it can happen.

Q. What are the probabilities where a joint, such as this knee joint, is involved with reference to the future troubles that may occur? What are the possibilities?

A. The probabilities are that they will have some joint aching and pain and arthritic symptoms even years after the accident.

Mr. Guimont: I believe that will be all.

Mr. Bateman: No further questions.

The Court: You may step down.

(Witness excused)

The Court: You may call the plaintiffs' next witness or otherwise proceed. Would you like to recall Mrs. Dooley who was on the stand, to finish her testimony?

Mr. Guimont: Yes.

The Court: Did you wish, while the Doctor was here, to offer the x-rays?

Mr. Guimont: We wish to offer the x-ray picture.

The Court: Any objection?

Mr. Bateman: I would like to see it.

Mr. Guimont: Will you please mark this?

(Three photographs marked Plaintiffs' Exhibit 4 for identification.)

Mr. Bateman: Defendants have no objection to Plaintiffs' Exhibit 2. [70]

The Court: Plaintiffs' Exhibit 2 is now admitted.

(Plaintiffs' Exhibit 2 received in evidence.)

The Court: You may now proceed.

MRS. DOROTHY DOOLEY,

having been previously sworn, testified further as follows:

Redirect Examination

Q. (By Mr. Guimont): Mrs. Dooley, showing you Plaintiffs' Exhibit 4, what is that representative of? Is that the area immediately adjacent——

The Court: Try to avoid leading questions.

Q. (By Mr. Guimont): What is that?

A. That is the area just surrounding their apartment. That is their apartment, the corner window, was their apartment.

Q. In the far background, there is a telephone pole down there, is there? A. Yes.

Q. Where is that with reference to where Mrs. Dooley is supposed to have fallen?

A. I didn't see Mrs. Dooley fall, but it is my understanding it happened right at that place where the wire was.

Mr. Guimont: I believe that is all.

Mr. Bateman: Are you offering that, Counsel?

Mr. Guimont: Yes.

Mr. Bateman: The defendants will object to the offered Exhibit No. 4 for the reason that it does not show actually the area involved in this case, but an area somewhat distant from there.

Also, there are figures in the foreground that are not identified, and there is a wire fence stake in the picture.

(Testimony of Mrs. Dorothy Dooley.)

It is not shown when that was up. It is not shown that it has any materiality to this case.

The Court: Is it one of your objections that the plaintiffs' Exhibit 4 does not purport to show the conditions as it was on the day of the accident?

Mr. Bateman: On the day of the accident, or at the place of the accident, Your Honor. The particular place involved in this case is so remote in that picture that it cannot be distinguished, and in the foreground there appear other objects which are immaterial and I believe improper to be admitted in this case. [72]

The Court: It has not been established as to when it was taken. That is of interest to the Court.

Q. (By Mr. Guimont): Mrs. Dooley, when did you take the picture?

A. If you would show me the other half of these pictures, it was taken at the same time. Mrs. Dooley was in a cast, and it was about two weeks after her accident, and the other three pictures that belonged on the film show her in the cast and show the children on the same lawn.

Q. The picture does show the way in which the wires were attached to stakes? A. Yes.

Q. And that was the same general means by which they were attached down here to the telephone pole that is in the far background?

A. Yes.

The Court: What is the purpose of the offer, and what kind of information do you contend it proves?

(Testimony of Mrs. Dorothy Dooley.)

Mr. Guimont: Just to indicate the faulty means by which the barricade was erected.

The Court: The objection is sustained.

Mr. Guimont: That will be all, Mrs. Dooley. [73]

The Court: Do you wish to cross-examine this witness, Mr. Bateman?

Mr. Bateman: No further questions.

The Court: You may step down.

(Witness excused)

The Court: At this time, we will take the noon recess, until two o'clock.

Mr. Guimont: May the record show that we are offering that exhibit in evidence?

The Court: The objection is sustained.

(Plaintiffs' Exhibit 4 rejected.)

(At 12:00 o'clock noon, Wednesday, March 10, 1954, proceedings recessed until 2:00 o'clock p.m., Wednesday, March 10, 1954.)

Seattle, Washington, March 10, 1954,
2:00 o'clock p.m.

The Court: You may proceed with the case on trial.

Mr. Guimont: May I have this marked?

(Scale drawing marked Plaintiffs' Exhibit No. 5 for identification.)

Mr. Guimont: I will call Mrs. Hart.

YVONNE HART

upon being called as a witness for and on behalf of the plaintiffs, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Guimont): Will you state your name, please?

A. Mrs. William L. Hart.

The Court: How do you spell your last name?

The Witness: H-a-r-t (spelling).

Q. (By Mr. Guimont): What is your given name? A. Yvonne.

Q. And where do you live, Mrs. Hart?

A. 1211½ North 44th Street. [75]

Q. In what city? A. Seattle.

Q. And, Mrs. Hart, are you acquainted with Mrs. Dooley?

A. Yes. I have known the Dooleys for six years.

Q. And did you have occasion to visit the Dooleys in November of 1952 or shortly before then? A. Yes, I did.

Q. Do you recall an occasion when Mrs. Dooley was injured? A. Yes.

Q. How soon before that did you visit them?

A. One week previous.

Q. And when you visited them, how did you get there? A. My husband brought me.

Q. In what kind of a conveyance? A. A car.

Q. In the family car? A. Yes.

Q. Referring to this Exhibit No. 5, would you point out and mark with a red pencil, if there is

(Testimony of Yvonne Hart.)

one available, the point and location where you parked your car? [76]

(Witness drew on Exhibit No. 5.)

Mr. Bateman: May I ask, has the Court been advised as to what this Exhibit 5 is?

Mr. Guimont: I will advise the Court.

The Court: If Counsel are agreed on that, I will be glad to have you do that.

Mr. Guimont: It is a map of the entire project area, Your Honor, that is involved in this litigation, and the area owned by the United States Housing Administrator and managed by Carroll, Hedlund & Associates.

The Court: By whom, and for what purpose was it made?

Mr. Guimont: It was made by the defendants.

Mr. Bateman: If I may explain that, your Honor. Not long ago, a complete topographical drawing of the entire area was made at the request of the Federal Housing Authority by the American Engineering Company of Seattle, and as results of their survey and field notes, this drawing or the original of this print was prepared.

The Court: By whom?

Mr. Bateman: By the American Engineering Company.

The name of the engineer just now escapes [77] me, but it has been stipulated.

The Court: Is that a local concern?

Mr. Bateman: Yes, it is, Your Honor. I believe it appears on the drawing, Your Honor. It says on

(Testimony of Yvonne Hart.)

the drawing, American Engineering Co., 322 Columbia Street, Civil Engineers & Land Surveyors. Arthur Hanson, I believe, is the engineer who prepared it.

The Court: And what do you call it?

Mr. Bateman: Exhibit No. 5 is a topographical drawing of the area as it exists and the property within the area on the drawing designated by the property line is the site of the Lake Burien Apartment Project.

Mr. Guimont: That is true.

The Court: Very well; you may proceed and inquire of the witness.

Q. (By Mr. Guimont): Now, will you mark on the map the location where you parked your car on the occasion of that visit?

The Court: Do you wish to advise her how to mark?

Q. (By Mr. Guimont): Will you mark it with a red pencil with a [78] little rectangle?

(Witness draws on Exhibit No. 5.)

Q. Now, after you parked your automobile, where did you go?

A. Right into the court.

Q. And when was that with reference to November 5, 1952? A. A week before.

Q. And which direction did you take to go into the Dooleys' apartment?

A. We got out of the car on the right-hand side, and walked right into the court past the telephone pole.

(Testimony of Yvonne Hart.)

Q. Will you mark with the blue pencil a cross on the point where that telephone pole is that you speak of?

A. What kind of a mark shall I make?

Q. Just a little cross to mark that pole.

(Witness marks Exhibit No. 5.)

Q. And did you pass the telephone pole on the walk? A. Yes.

Q. Now, did you observe anything about the barriers or barricades that were present at that point?

A. Yes. There was a little fence about this high (indicating) with stakes and wires in between. They were laying over on the sidewalk.

Q. And did you have anybody besides your husband with you?

A. Yes. I had my two children. I had the little girl with me, and my husband had the little boy, and we both turned around to them and told them to be careful of the wires because they were on the sidewalk.

Mr. Bateman: Move the answer be stricken.

The Court: The answer will be stricken. The reason for that is you cannot appropriately speak of conversations had in the absence of the plaintiffs or defendants or either one of them.

Q. Just with reference to the sidewalk, just where was this wire?

A. Over on the sidewalk, almost in the middle of it.

Q. And did you do anything about that?

A. No, I did not.

(Testimony of Yvonne Hart.)

Q. Did you move them? A. No, I did not.

Q. What time of day were you there?

A. It was around one or two in the afternoon.

Q. And did you observe them when you left the
[80] Dooley's residence? A. No, I did not.

Q. Did you go back out the same way?

A. Yes, we did.

Q. And you don't recall observing them at that
time?

A. No, I didn't pay any attention to them then.

Q. Did you see Jean Dooley at that time?

A. That day?

Q. Yes. A. Yes, I did.

Q. Was there anything wrong with her leg or
her appearance? A. Oh, not that day.

Q. Have you seen her since?

A. Yes, I have.

Q. And how soon after her accident did you see
her?

A. Oh, I would say about three months, two or
three months.

Q. And did you observe anything about her
then?

A. Well, she couldn't walk too well. Her left leg
was stiff. She had to limp.

Q. And have you observed her from time to time
since then? [81] A. Yes.

Q. About how often?

A. Well, I have been out there about twice
since three months after the accident.

Q. And on those occasions of your visit, did

(Testimony of Yvonne Hart.)

you pay any attention to or notice anything about Jean?

A. Well, no, except that she didn't walk as good as she used to.

Q. What seemed to be her difficulty, if any?

A. Well, she limped a little bit.

Mr. Guimont: I believe that is all.

Cross Examination

Q. (By Mr. Bateman): Can you fix the date or very close to the date when you first saw Mrs. Dooley after this accident, Mrs. Hart?

A. No. I can't tell you the date. It was just between two or three months.

Q. Was it before Christmas of 1952?

A. No.

Q. Was it after Christmas?

A. It was after Christmas.

Q. Was it after January 1, 1953?

A. Somewhere in there.

Q. Around January 1, 1953? [82]

A. Yes.

Q. And where was it you saw her at that time?

A. In her apartment.

Q. You came especially to visit her, did you?

A. Yes.

Q. She had her two children with her then?

A. Yes.

Q. Was there anyone else staying with her then? A. No.

Q. Was she in a cast? A. No.

(Testimony of Yvonne Hart.)

Q. Was she on crutches? A. No.

Q. This occasion that you went to visit her before her accident which occurred on November 5, 1952 was approximately one week before that?

A. Right.

Q. Then it was sometime before the end of October?

A. Well, it was the Sunday before the 5th of November, not quite a week.

Q. Was that the day after Hallowe'en?

A. I can't remember the date.

Mr. Bateman: No further questions.

Mr. Guimont: That is all. [83]

The Court: What about the exhibit? Do you have anything to say about that?

Mr. Guimont: I believe we stipulated that that could be admitted.

The Court: I didn't hear any offer.

Mr. Guimont: Well, we are offering that exhibit and offer it in evidence at this time.

Mr. Bateman: Before the witness leaves the stand, I wonder if I may see the exhibit?

The Court: You may. The Court postpones the ruling for the time being.

(Plaintiffs' Exhibit No. 5 handed to Mr. Bateman.)

The Court: Did you hear what Counsel says, Mr. Bateman?

The occasion calls for response from you. He is offering this exhibit.

Mr. Bateman: We have no objection.

(Testimony of Yvonne Hart.)

The Court: It is admitted.

(Plaintiffs' Exhibit No. 5 received in evidence.)

Mr. Guimont: That will be all, Mrs. Hart.

The Court: You may step down.

Mr. Guimont: May Mrs. Hart be excused?

Mr. Bateman: Yes. [84]

The Court: Mrs. Hart is excused, and she may retire when she wishes.

(Witness excused.)

Mr. Guimont: Mr. Dooley.

RICHARD E. DOOLEY

upon being called as a witness for and in his own behalf, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Guimont): Will you state your name? A. Richard E. Dooley.

Q. Are you hard of hearing, Mr. Dooley?

A. Yes, I am hard of hearing. I meant to bring that point out.

The Court: Is it difficult for him to hear anything and for you to make yourself heard to him?

Mr. Guimont: Occasionally, yes.

The Court: Would you take the arrangement that we made before?

(At this time, Mr. Dooley was placed in a seat directly in front of the Counsel table.)

Q. (By Mr. Guimont): Your name, please? [85]

A. Richard E. Dooley.

(Testimony of Richard E. Dooley.)

Q. Where do you live?

A. 1206 Southwest 137, Apartment 102, at present.

Mr. Bateman: I am sorry, but I did not get the street address.

The Witness: 1206 Southwest 137, Apartment 102.

Q. And are you married to Jean Dooley?

A. Yes, I am.

Q. Now, what is your occupation?

A. I am a structural ironworker.

Q. And, Mr. Dooley, on November 5, 1952, where were you living?

A. At 13710 12th Avenue Southwest, Apartment 101.

Q. And was that a housing project?

A. Yes, it is.

Q. And how long have you lived there?

A. At that time, I had lived there six months, approximately.

Q. And who did you rent from?

A. From the United States Government.

Q. Well, who managed it?

A. Carroll, Hedlund & Associates.

Q. And is there a rental office on the project?

A. Yes, there is.

Q. Did you pay your rent there?

A. Yes, I did.

Q. How much was your rent that time?

A. I believe my rent at that time was \$69.50, I believe.

(Testimony of Richard E. Dooley.)

Q. And had you been home all the time from the time you rented until November of 1952?

A. No, I hadn't been home all the time. Directly after moving into the project, I went to Alaska.

Q. And when did you return from Alaska?

A. September 26th or 23, I am not sure.

Q. Of what year?

A. That would have been 1952.

Q. Now, when you returned, what was the condition of the yard area around your home, right in the immediate vicinity of your apartment house?

A. Well, when I left, there wasn't any lawn in, and when I returned, they had apparently put in a new lawn, and had a wire fence, one wire strung around a new lawn.

Q. Did you observe the condition of that barricade after you returned and up until November of 1952? [87]

Mr. Bateman: May I interrupt? Counsel, which barricade are you referring to?

Mr. Guimont: To the barricade immediately surrounding the ground on which his apartment rested.

Mr. Bateman: Well, is this the one that you are contending Mrs. Dooley fell over?

Mr. Guimont: No. I believe that is across the sidewalk from it.

Mr. Bateman: I object to the question.

The Court: The objection is overruled. I understand it is preliminary.

(Testimony of Richard E. Dooley.)

Q. What did you observe about the barricade that was around the lawn area on which your apartment house was situated?

A. Well, apparently they had put one wire strand to keep the children off the lawn, apparently, but at times inadvertently, children would knock it over with tricycles, and at times—I can recall a few times that stakes had been pulled out or knocked out.

Generally speaking, I don't think much of the one-wire situation. Of course, I am a structural ironworker.

Q. Was there anything across the sidewalk from the plot of ground on which your apartment was located in the way of a barricade? [88]

A. Well, across the sidewalk from where my apartment is located, I don't think there was anything on that section of lawn, because that had been in a considerable period of time, I believe.

Mr. Guimont: Would you show the witness Exhibit No. 5?

(Plaintiffs' Exhibit No. 5 handed to the witness.)

Q. Referring to Exhibit 5, do you know the area in which your wife is supposed to have fallen down? A. Yes, I do.

Q. And would you mark that with red pencil, the area where you were informed that she fell?

A. A cross?

Q. Just a small cross, in red.

(Witness marks on Plaintiffs' Exhibit No. 5.)

(Testimony of Richard E. Dooley.)

Q. (By Mr. Guimont): With reference to that sidewalk, would you be able to tell us what barricade, if any, was alongside of the sidewalk on the edge furthest from your apartment house?

A. Well, this edge here?

Q. Well, referring, if you will, to the point you have marked with the cross, and alongside the telephone pole, was there any barricade there? [89]

A. Yes, there was.

Q. And did you have occasion to observe it from time to time, prior to November 5, 1952?

A. I had occasion to observe it, prior to November 5, 1952, at times. It wasn't in very good condition.

Q. Just what did you see about it, or what did you observe about it?

A. Well, sometimes a stake would be out or missing, and of course, the wire would be laying in different directions, due to that. There had been several times—I didn't make it a specific point to notice at any given date—but there were times when the wire was laying on the sidewalk, or a stick had been pulled up or knocked over. Generally, I wouldn't say it was in very good condition, in my opinion.

Q. Now, did you observe any workers on the project prior to November 5, 1952?

A. Oh, yes. There are workers on the project. Yes, there are.

Q. What did those workers do that you saw

(Testimony of Richard E. Dooley.)

them doing after September, when you returned from Alaska?

A. Well, generally, taking care of the property.

Q. Did they have anything to do with the lawns? [90]

A. Yes, they did.

Q. What did you see workers doing on the lawns?

A. Watering them at times, cultivating them, you might say.

Q. Trimming, possibly, hedges?

A. I believe I saw that done. Just general maintenance in the way of gardening, I believe you would call it, or landscaping.

Q. Did you observe them at any time doing anything to these wires that were on the property?

A. Several times I have seen them straightening out wires or putting back a stake.

Q. Did you ever see anyone knock down any of those wires?

A. Did I ever see anyone knock down the wires?

Q. Yes.

A. No, I can't say that I distinctly ever saw anyone knock down the wires. However, I have seen wires down and surmised that it came from a tricycle or bicycle or some vehicle, some young children's toy like that.

Q. Are there many children in the area?

A. Considerably, yes, there are considerable children in the area.

(Testimony of Richard E. Dooley.)

Q. Now, prior to November 5, 1952, what was [91] the condition of your wife's health so far as you know?

A. Well, seemingly in reasonably good health prior to November 5.

Q. Did she ever have any trouble with her limbs?

A. No. She has never had any trouble that way.

Q. Were you home the night that she fell?

A. Yes, I was. I was home the night she fell.

Q. What were you doing just before she fell?

A. I was working night shift. At the time, I was sleeping.

Q. And what at first happened to call your attention to your wife's trouble?

A. The neighbor lady came in and awakened me and told me of my wife's plight, and, of course, I hurried to the scene.

Q. Who called you?

A. Mr. and Mrs. Skewes are the occupants of the apartment that aroused me.

Q. Are they here now?

A. I don't know exactly their address, but they are in town, yes, they are.

Q. What did you do when you were contacted by them? [92]

A. Immediately I went to the scene where my wife was and tried to help her into the apartment.

Q. Where was she when you first went there?

A. My wife was outside my neighbor lady's window, her kitchen window.

(Testimony of Richard E. Dooley.)

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A. Yes, I was. I was home the night she fell.

Q. What were you doing just before she fell?

A. I was working night shift. At the time, I was sleeping.

Q. And what at first happened to call your attention to your wife's trouble?

A. The neighbor lady came in and awakened me and told me of my wife's plight, and, of course, I hurried to the scene.

Q. Who called you?

A. Mr. and Mrs. Skewes are the occupants of the apartment that aroused me.

Q. Are they here now?

A. I don't know exactly their address, but they are in town, yes, they are.

Q. What did you do when you were contacted by them? [92]

A. Immediately I went to the scene where my wife was and tried to help her into the apartment.

Q. Where was she when you first went there?

A. My wife was outside my neighbor lady's window, her kitchen window.

(Testimony of Richard E. Dooley.)

Q. Now, with reference to Exhibit 5, will you point out by a blue cross the location of your wife at that particular time and mark it "W"?

A. Where I picked my wife up?

Q. Yes.

A. Approximately about there, I would say (drawing on Exhibit 5.)

Q. You have marked that just "W"?

A. "W".

Q. Will you also mark a little small cross there alongside of a "W" to represent your wife's body?

A. You said "cross", I believe, didn't you? (Marks Plaintiffs' Exhibit 5.)

Q. Yes. Now, what did you do when you found your wife?

A. Well, my main concern was to get her inside the house and call a Doctor, and that is what I did. I had to take her to my apartment via some steps to get her in the apartment. It is very, very hard to take [93] a woman like that in an apartment when she has a broken leg and pregnant at the same time. With the assistance of the neighbor lady, we both got her in there.

Q. What did you see or observe about your wife's condition at that time when you picked her up?

A. Well, I saw she had had an injury, and obviously she couldn't talk when I picked her up. Obviously she couldn't. She was laying there.

Q. What were the conditions of her clothes?

A. Actually, I can't say that I can answer that,

(Testimony of Richard E. Dooley.)

because I was primarily concerned with her knee. That is the only way I could answer that.

Q. Now, did you take her into the adjoining apartment?

A. With the help of the neighbor lady, we took her arms and assisted her into the apartment.

Q. Was she able to walk?

A. No, she wasn't able to walk.

Q. Thereafter, what did you do?

A. After I had her in the house and on the daveno and inspected her leg, and from previous experience with lots of industrial accidents, I knew it was serious, so first thing in my mind was to get her something so that she could endure the pain. I could see it was extremely painful, so I tried to call one Doctor. [94] He was out—I believe on his way home. Went across the street to an osteopathic physician which resided right across the street at that time. He wasn't in. I went to a neighbor lady and had her tell me the name of her Doctor in West Seattle, and tried to call him. It was at a very inopportune time for Doctors. It was at the commuting time, as I understand it. I called my family obstetrician, the Doctor that takes care of my wife, delivers the babies, and had him advise me what to do.

Q. And then what did you do?

A. Took her into the Maynard Hospital in my car.

Q. How did you get her into your car?

A. With the assistance of a neighbor that lives

(Testimony of Richard E. Dooley.)

upstairs, a neighbor man. We got her into the car, which took a little maneuvering.

Q. Now, did you leave your wife at the hospital that night, then? A. Yes, I did.

Q. And how long was she in the hospital as you recall?

A. Eight or nine days. I am not sure. Eight or nine days.

Q. Now, did you see her in the hospital during [95] that time? A. Yes, I did.

Q. What was her general condition from the evening that you took her up there until she was returned to home?

A. Well, she was very overwrought all the time she was in the hospital, in quite severe pain, the first couple days before the swelling went down and he could operate on the knee, very severe pain.

After he operated on the knee, why, that seemed to remedy that a little bit, the pain, that is, after the swelling had gone down just enough so that he could begin the operation.

Q. Now, when she came home, what was her condition?

A. Well, she came home with a cast on her leg and suffered quite a bit mentally, and considerable suffering she had physically from the leg. She had to take tablets at times to sleep at night, and generally speaking, it was the combination of mental and physical factors involved there.

Q. How did she behave towards you and the family?

(Testimony of Richard E. Dooley.)

A. She was very upset and overwrought, and under the circumstances, why, I could appreciate that, [96] but she was in very, very bad nervous state.

Q. How long did that persist?

A. Well, actually, I don't think it has cleared up yet.

Q. She seemed different to you ever since the accident?

A. Yes, quite a bit.

Q. Now, did you have any help in the home immediately after this accident?

A. My mother came out and helped with the household chores and watched the children while my wife was in the hospital and for approximately five or six weeks thereafter. She commuted the last couple of weeks, I believe, while I was working. I had to have someone there with the children.

Q. Now, with reference to the area where you have been informed the fall took place, what is the lighting facility there, if any?

A. They have a light on the adjoining apartment house. I don't think it is quite adequate to cover the sidewalk where the accident occurred.

Specifically, I believe the light was put up to aid one in getting out of cars in that parking area involved there.

Q. With reference to that particular area where [97] you are informed the fall occurred, what is the condition of the lighting on the sidewalk?

A. Well, under the conditions at nighttime, I

(Testimony of Richard E. Dooley.)

don't think you could see that wire with the lighting facilities available. I don't think you could see the wire at nighttime.

Mr. Guimont: I believe that will be all.

Cross Examination

Q. (By Mr. Bateman): Mr. Dooley, with regard to the lights available there, there is this area light from the adjoining apartment house, is there not? A. Yes. That is true.

Q. And in addition to that, there is a light at the end of that little parking street, is there not, on a regular street light pole there?

A. If I am in error there, I would have to be corrected. The only light I know of is actually the light on the apartment house. There may be another one.

Q. You don't know whether or not there is another light there then at the end of that little drive-in street to that parking area?

A. At the end of the parking area, there might possibly be a light, yes, that is true. [98]

Q. And do you know whether or not the store or market area just immediately adjoining that portion of the project had floodlights up on high light poles lighting up the market area?

A. Yes, that is true. They have floodlights. I have noticed them at times.

Q. And, Mr. Dooley, have you had occasion to observe in the evening or at night how those floodlights shine on the surface of the building along

(Testimony of Richard E. Dooley.)

which this particular walk runs and illuminate the sidewalk?

A. I have never distinctly noticed that. However, the floodlights could in said condition not completely illuminate the sidewalk in view of the fact that you have cars parked between the floodlights.

Q. Have you ever measured the amount of light on the surface of that walk at the point where you have indicated on this exhibit that you are informed this accident occurred, the amount of artificial illumination after complete darkness on the surface of that walk?

A. Well, to measure—what are we using to measure with? May I ask that, please?

Q. Well, have you measured it in any way with anything?

A. Well, the only thing you could—it looks to me like—it would be with your eye. [99]

Q. Then I take it you have not measured it except by going out there to look?

A. That is true.

Q. And have you ever been out there to look at night to see how much illumination there is on that walk?

A. Well, since the accident, I can see how she could—

Q. Well, can you answer my question? Have you ever been out there at night to look and observe and see, form an opinion, as to how much light there is from that walk?

(Testimony of Richard E. Dooley.)

A. Well, yes, I have.

Q. And you can't recall whether or not there is a street light on the telephone or light pole right at the end of that little driveway some 100 feet away?

A. Well, a light a hundred feet away wouldn't affect the walk.

Q. You can't remember whether or not there is even any light there even though you have been out there to observe the condition of the light?

A. No. I cannot tell you the condition of a light a hundred feet away, because that wasn't involved with the area where the accident occurred.

Q. Well, in going out there to measure, did you [100] take any notice or observe what the condition of the light is on that walk at night? Did you observe what effect, if any, those floodlights from the market area have on the sidewalk there as far as illumination is concerned?

A. As far as illumination is concerned, floodlights could light the sidewalk, but they wouldn't light the wire.

Q. What is the situation as far as those floodlights are concerned, if you have been out there to observe it?

A. Well, actually, I can't answer that. I don't know that I can.

Q. Well, do you know whether or not those floodlights have any effect on the amount of illumination on that sidewalk?

A. I do not.

(Testimony of Richard E. Dooley.)

Q. Did you go to Alaska during the summer of 1953, this summer just past?

A. I did, yes.

Q. When did you leave to go to Alaska the first time?

A. July 2, I believe, of this past summer.

Q. And when did you return?

A. About July 15 or 16. [101]

Q. You were just up there for two weeks, then?

A. A very short time, yes, I was.

Q. And you haven't been back there since?

A. Yes, I have.

Q. When were you back again?

A. I went back approximately August—I couldn't give you the exact date. These things happen so often.

Q. You were up there in August, then, for how long?

A. Just about a month.

Q. And returned in September again, did you?

A. I believe it was September.

Q. During that time, your wife was alone at the apartment?

A. Yes, she was.

Q. By the way, you are still residents at the Lake Burien Apartment House Project, aren't you?

A. Yes, we are.

Q. You now live in a different apartment there?

A. Yes.

Q. It is a larger apartment?

A. Yes, it is.

Q. And you moved into that new one when

(Testimony of Richard E. Dooley.)

your [102] wife returned from the hospital with this new baby, or shortly thereafter?

A. Yes.

Q. My question, Mr. Dooley, was you moved into a new apartment shortly after your new baby was born in June or July of 1953, is that correct?

A. No, that isn't correct.

Q. When did you move from the apartment in which you were living on November 5, 1952?

A. I can't give you the exact date. However, associated with the birth of the baby, we moved there I am sure before we had the new baby.

Q. Shortly before, was it?

A. I believe so.

Q. And when was your baby born?

A. June 14, 1953.

Q. And that was very close to the date the birth of the child was expected, was it not?

A. Oh, absolutely.

Q. And between the time of your wife's accident on November 5, 1952 and the birth of the baby on June 14, 1953, you were living home with your wife, were you, all that time?

A. Yes, I was.

Q. And she was caring for these two other [103] children you have, one about nine months old and one two years old, as well as carrying this unborn child?

A. Yes, that is true.

Q. She had no help during that time except on occasions when your mother was there, is that correct?

A. And from myself.

(Testimony of Richard E. Dooley.)

Q. And your help?

A. Yes, changed lots of diapers.

Q. I'll bet you have.

By the way, did she take care of the diapers, et cetera, during that time, except for the assistance that she received from you?

A. I have aided her. That is true.

Q. Did these other two youngsters nine months old and approximately two years old ever get on her nerves during that time?

A. We are referring to after the fall?

Q. Yes.

A. I think everything does now.

Q. Well, now, isn't it true that before the fall, also, that she was a pretty busy lady, and sometimes these two young children, so close together in age, and so young, often got on her nerves before this accident? [104]

A. Well, yes. Children have a way of doing that.

Q. She would be a pretty unusual mother if there weren't times when the little ones got on her nerves, wouldn't she?

A. That is true, although she is a very gentle mother with my children.

Q. I am sure of that.

Were you working all the time, that is, regularly, between September, about the time you returned from Alaska in 1953, until the date of this accident? A. No, I wasn't.

(Testimony of Richard E. Dooley.)

Q. You were not? Working just occasional jobs, is that correct?

A. Well, I had been to Alaska on a three and a half months, seven days a week, fourteen hours a day job. I took a little time off when I returned, and then went back to work.

Q. How long were you off work, do you recall?

A. Just about November 3 or 2, let's say, just had obtained that job before she fell.

Q. Just before this accident? A. Yes.

Q. You testified, I believe, that you saw the [105] Project crew or grounds crew working around the grounds of the apartment house in that area from day to day? A. That is true.

Q. Do you know how many men they had from the grounds crew in the apartment project?

A. No, I haven't any idea.

Q. You saw them from time to time repairing the fences? A. That is true.

Q. On Plaintiffs' Exhibit 5, you have placed the blue "W" and a sort of a star—cross—mark where you say you saw your wife first after this accident? A. That is right.

Q. And in your opinion, approximately how far was that from the place where you were informed she fell?

A. Approximately 45 feet offhand.

Q. Had she had any assistance to get that far?

A. None whatsoever.

Q. She was not unconscious then when you came to her?

(Testimony of Richard E. Dooley.)

A. I would say semi-conscious.

Q. Was she crying?

A. Tears on her face, and extreme pain.

Q. Well, now, was she crying? [106]

A. Yes, she was.

Q. Did she talk to you?

A. She did incoherently.

Q. Who assisted you in getting her into the building? A. My immediate neighbor lady.

Q. What was her name? A. Mrs. Skewes.

Q. And did you do that by placing one of your wife's arms over your shoulder and the neighbor lady assisting on the other side in a similar manner? A. Yes, but it was very awkward.

Q. So your wife supported her weight more or less on the right leg—the uninjured leg—and moved along in that fashion?

A. With like support on her uninjured leg, yes.

Q. Now, was this neighbor lady, the same Mrs. Skewes, whose window she was outside of at the time you came to her?

A. Was that the same neighbor lady was assisted me?

Q. Yes. A. Yes, that is true.

Mr. Bateman: No further questions.

Mr. Guimont: I have no further questions. [107]

The Court: He may be excused from the stand, unless counsel wish to ask further questions.

(Witness excused.)

Mr. Guimont: Will you mark this?

(Bills marked Plaintiffs' Exhibit No. 6 for identification.)

Mr. Bateman: We have no objections to No. 6.

Mr. Guimont: It may be stipulated that these are the bills for medicine and the Maynard Hospital and the therapist, Mrs. Myers, that the charges are reasonable?

Mr. Bateman: Yes, we will so stipulate.

Mr. Guimont: We will offer No. 6, your Honor, in evidence, as part of the bills.

The Court: It is now received in evidence.

(Plaintiffs' Exhibit No. 6 received in evidence.)

Mr. Guimont: Mrs. Dooley, please.

JEAN DOOLEY

upon being called as a witness for and on her own behalf, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Guimont): Will you state your name, please? [108] A. Jean Dooley.

Q. And you are the wife of Richard E. Dooley?

A. That is right.

Q. And how old are you, Jean? A. 27.

Q. And what is your birthday?

A. April 17.

Q. What year? A. '26.

Q. 1926? A. Yes.

Q. And how many children do you have, Jean?

A. Three.

Q. And their ages now?

(Testimony of Jean Dooley.)

A. Nine months, two and three.

Q. Now, where do you reside now?

A. 1206.

Q. And where did you reside on November 5, 1952?

A. At 13710 12th Avenue Southwest, Apartment 101.

Mr. Bateman: May I interrupt? I did not get the witness' present address.

The Court: Will you give that address?

The Witness: 1206 Southwest 137th Street, [109] Apartment 102.

Q. (By Mr. Guimont): Mrs. Dooley, what is the name of the place you were living in?

A. Lake Burien Heights Apartments.

Q. And with reference to the city limits of Seattle, is it south?

A. It is south, zone 66.

Q. When did you first move there?

A. June, I think, June of '52, I believe.

Q. And you rented it from——

A. Carroll, Hedlund & Associates.

Q. And do they have an office on the project grounds? A. Yes, they have.

Q. Do you recall what your rent was at that time?

A. \$69.50. And then we had a raise and it became \$74.50.

Q. Now, did you see the grounds immediately surrounding your own apartment from time to time? A. Yes, every day.

(Testimony of Jean Dooley.)

Q. What was the condition at the time in November of 1952 of the lawn area or the area around the apartment? [110]

A. Well, by the month of November, this lawn had become quite substantial, and we had had permission from the office—Mrs. Rebar called to get permission to be on the lawn, but the fence remained in one spot in front of my house.

Mr. Bateman: I would like to object to this witness' testimony concerning the conversation Mrs. Rebar may have had with anyone, and I move to strike it.

The Court: You cannot tell what anybody said.

Mr. Bateman: I move to strike that testimony.

The Court: You may say what they did, but do not speak the words.

Q. (By Mr. Guimont): Just what was the condition then of the barricades around the lawn area?

A. Well, around my front entrance, there were no wires whatsoever. The stakes had been uprooted and destroyed by the children, and the wires were somewhere where they shouldn't have been. They weren't there any more, but on the other side of my building, toward the corner, the wires were up, and in spots the wire might be broken and coiled around, looped in the air, up against the house, or most anywhere, and some of the stakes were uprooted. Some were broken and some were missing. The neighbors and myself always threw the wires aside [111] out of the path any time we

(Testimony of Jean Dooley.)

saw such a situation. They had been maintained for awhile up until the painters painted the place and they tore down part of the wires with their ladders, and I guess they gave it up then, and there was no more maintenance, but up until then, I saw the men working on the wires, keeping them in condition.

This was about four weeks before the accident.

Q. And then, up until that time, did you observe them caring for the barricades?

A. I would like to retract that four weeks. After thinking it over, I am quite sure it must have been longer, because I do know that the repair stopped—I am hooking this up with a certain date in my mind—I would say it was the latter part of September that there was no more maintenance.

Q. Were the buildings being painted up until then, do you say?

A. I am quite sure it was sometime in September they were painted, and that is when the wires were at their worst, and remained so.

Q. Now, up to that time, who did look after the wires?

A. Well, I had seen some fellow come around every few days with pliers and a little cart with some [112] extra wire and stakes, and every few days I would see him putting them back like they should be, but they were torn down about as fast as he could repair them.

The Clerk: This is Plaintiff's Exhibit No. 7.

(Testimony of Jean Dooley.)

(Photograph marked Plaintiffs' Exhibit No. 7 for identification.)

The Court: Before you were married, where did you reside?

A. Well, I lived in Alabama.

The Court: You were not reared in Alabama, were you?

The Witness: Yes.

The Court: And your husband, where did he grow up?

The Witness: Seattle.

The Court: Do you or your husband ever do any public speaking or any activities in the way of public service?

The Witness: No.

The Court: Just private occupational activity?

The Witness: Well, I have worked with the public.

The Court: What kind of public work? [113]

The Witness: Waitress; waitress.

The Court: Do you ever do any other kind of public work, like taking a leading part in any organization you belong to, church, union, society or group?

The Witness: No. I was once president of B.Y.P.U. when I was much younger.

The Court: Did your husband ever, to your knowledge, take any leadership among young people or others?

The Witness: Nothing other than we always

(Testimony of Jean Dooley.)

buy what the Girl Scouts are selling and Boy Scouts.

The Court: I meant in the way of solicitation or advocating to others any products or causes or anything of that sort?

The Witness: No.

Q. (By Mr. Guimont): Mrs. Dooley, showing you, referring to Exhibit No. 7, what is that the scene of?

A. Well, this is the spot where I fell as I turned the corner.

Q. That is a picture——

A. Of the sidewalk and the spot where I fell.

Q. That picture is one that the defendants have taken? [114] A. Yes.

Q. It doesn't show any barricade?

A. No. The wires are removed in this particular picture. This is much later.

Q. Now, did you yourself take a picture after you returned from the hospital of the area?

A. Yes, I did.

Mr. Guimont: Will you mark it?

(Photograph marked Plaintiffs' Exhibit No. 8 for identification.)

Q. (By Mr. Guimont): And referring to Plaintiffs' 8, I will ask you if that is the picture you took? A. Yes, it is.

Q. And how soon after your accident did you take that?

A. Well, I was walking along—it must have been two weeks after I had returned—no, I did

(Testimony of Jean Dooley.)

have a cast on—no, I was out of my cast. I would say six weeks after the accident.

Q. Now, referring to the night of November 5, 1952, will you tell the Court just what occurred when you left your home, where you were going and what occurred?

A. Well, it was about ten or possibly fifteen minutes until six o'clock, and I was on my way to the [115] meat market, which is about three minutes' walk from there.

Mr. Bateman: I am sorry, Mrs. Dooley, but you speak very rapidly and not very loudly, and it is somewhat difficult to hear. I wonder if the reporter would read back this last answer?

The Court: The reporter will read back the answer as far as she has gone.

(Last answer read by the reporter.)

A. I left my children with Mrs. Skewes, a neighbor across the hall, two small children. There is a basement entrance in the building, right at my door, and I took that entrance and went to the basement through the basement, and up a short stairway there, and across a drying yard.

It is a cement walk, cement yard, and then I entered the sidewalk which leads around the side of the building and on to the main sidewalk and the spot where I fell.

Q. Now, at that time, what was the light? Was it daylight or what?

A. It was quite dark, and since then, about the light, I did make it a point to look and see where

(Testimony of Jean Dooley.)

the light was located. But at that time, I didn't look for a light, but I do know it was dark and——

Mr. Bateman: I move the witness' answer be stricken. It is not responsive to any question.

The Court: I think you should wait now until another question is asked.

Mr. Guimont: What was my last question?

(Last question read by the reporter as follows: "Now, at that time, what was the light? Was it daylight or what?")

Q. (By Mr. Guimont, continuing): Was the sun out?

A. No. It had gone down. It was quite dark.

Q. And do you recall any lighting fixtures that were on the ground?

A. At that time I didn't think of it, although later I noticed these things.

Q. Did you observe any lights over the area near the place where you fell?

A. Well, I only observed that it was quite dark at the spot where I fell.

Q. Now, were you in a hurry?

A. I was hurrying to the store.

Q. Now, what was your physical condition at that time?

A. Well, I have always been in excellent health. I was pregnant at this time, five or six weeks, and was [117] hurrying, not running, for that reason.

Q. Now, if you will refer to Exhibit No. 8, there is a telephone pole in that picture. What occurred when you drew up toward that pole?

(Testimony of Jean Dooley.)

A. Well, I felt myself being entangled in wire somewhere on the lower leg, and as to just how it was laying at that time, I really didn't see it, but I did realize I was going to fall—I felt it—but anyway, I stumbled forward several steps before I did fall, and came down with terrific impact on my knee, mostly, I suppose. I was trying to avoid falling flat, and, well, the pain then was so great in the next few minutes I am not sure just what happened. I know I tried to get to my seat and couldn't, and I considered pulling myself up on the telephone pole, but I couldn't get to it, and then there was a stake of wood laying near me which I hadn't seen before because it was so dark, and I tried to pull myself upright on it, and there was still a piece of wire attached to this wood.

I don't know whether I broke it or uprooted it or it was laying there or just what. I couldn't say about that, but I couldn't get to my seat, so I decided to wait a minute and see if someone would pass by, but all the shades were down and the lights were on in the places, and I figured most of them would be in the [118] kitchen, and so I proceeded to crawl, then, or, rather, to drag myself and retrace the steps I had come, and when I got to the drying yard—that is underneath my neighbor's kitchen window, and I had left her in the kitchen—I went to her for help. That was the closest spot.

Q. Did you yell or call to her?

A. I called to her. Her kitchen window was open, so she looked out, and I told her I hurt my

(Testimony of Jean Dooley.)

leg. I asked her to throw me a broom, which she did. I tried to raise upright on that, but I almost fainted or something, and laid down. So she came out and looked at my knee, and went and wakened my husband and she got me into the house.

Q. Do you recall what the appearance of your knee was right then when she looked at it?

A. It was terribly swollen, terribly, probably that big (indicating). By the time I got to the house, I would say my knee was about the size of a football or possibly more.

Q. Now, where were you when you felt this wire with reference to the sidewalk? Where were you when you felt the wire?

A. Well, I as turning the corner, and possibly shortly before I reached the corner—that I really can't be certain of. Either I was turning the corner, or was going to in the next step or two, but it was right on the corner there as you make a right turn.

Q. Referring to Exhibit No. 5, would you mark on that map with a small red "x", the position where you believe you were when you came in contact with the wire, and mark it "J" for "Jean"?

A. There is another "x" there. (Marking on Exhibit No. 5.)

Q. How did you get from that point to the point where you called to this other woman?

A. I crawled, or more or less pulled myself by my arms, and drug my body with my arms to her window.

(Testimony of Jean Dooley.)

Q. When you contacted this other neighbor, what occurred then?

A. Well, she came out, and my husband picked me up, as I recall, but I am not too clear about that. I think I was on his back, and she was more or less trying to steady my leg. In fact, she was sympathizing more than helping, but anyway, I think I was on my husband's back, hanging around his neck by my arms, and she assisted in trying to put a splint on my leg after we had got in the house, and we didn't do that. Oh, I don't remember it very clearly. I was in a lot of pain [120] and I was conscious, but I was hurting so bad I don't think I can remember that clearly enough to say.

Q. Well, did you go into your neighbor's apartment, or into your own apartment?

A. Into my apartment.

Q. And then what next happened?

A. Then my husband tried unsuccessfully to get a Doctor. He tried to get several Doctors, and then we were advised by my obstetrician just to go to the hospital, and he himself would notify Dr. Ruuska and have him there, and we arrived at the hospital—a neighbor man who lived upstairs assisted me to the car first—and we arrived at the hospital, and I was in great pain by then, and in fact, I was screaming with the pain and they gave me a shot of something—I don't know what—but it helped considerably, but it made me—I don't know—I can't remember so well after that, whatever it was.

I do remember, and I don't. Anyway, I am not

(Testimony of Jean Dooley.)

too clear there. The pain was still with me, but it wasn't as bad as it had been.

Q. Then do you recall talking to Dr. Ruuska when he got there?

A. I know when he came in, and I do know that he asked me what happened, and how did it happen. Actually, [121] I don't know if he was making conversation, or just what. Anyway, I answered him as briefly as possible, because I was in great pain, and each word was an effort to get out.

Q. Do you recall what you did say to him about what had happened?

A. Well, the best I remember, and I couldn't be just sure of the words I used, but it was very brief, just that he wanted to know why did I fall, and I said that I fell over a wire.

He said, "What kind of a wire?" And I said, "A wire for the purpose of keeping people off of the lawn." He said, "Like what?" And I said, "Like two stakes with a wire stretched between", or something to that effect, but I am not sure of the words I used.

Q. Now, do you recall the visibility at the point where you fell?

A. I recall there wasn't very much.

Q. Is that area lighted by lights at night?

A. There is a light about 75 or 100 feet from there, on a building, and there happened to be a wooden fence, a picket fence, probably eight feet high, and I think the fence is responsible for it, but anyway, that particular corner is obscured by some-

(Testimony of Jean Dooley.)

thing. I don't [122] know just what it would be, but I have passed there many months later at night and noticed this condition.

The whole corner there is quite dark.

Q. You have observed it since? A. Yes.

Q. Does the corner receive any light from the shopping area?

A. Well, actually, if it does, I didn't notice it at the time I was there, because this one time I inspected it deliberately for that reason to see how light the corner was, and it was quite dark, and I do know the light on the house was on, the street light which is on the house was on, and to my knowledge, that is the only light I saw unless the others were so far away that I didn't think they had anything to do with that thought.

Q. Well, do you know where the wire was when you fell?

A. Well, I know where I felt the wire, but I couldn't describe its position accurately.

Q. Well, with reference to your position on the sidewalk, and the sidewalk, where was the wire?

A. I do know that I was on the sidewalk. I was walking in the middle of the sidewalk, no doubt, and in the process of making a turn or about to, or already [123] had—I am not too clear there.

Q. Is that where you fell?

A. That is where I fell.

Q. Now, was that wire loose when you first felt it?

A. Oh, yes, it was definitely loose, because well,

(Testimony of Jean Dooley.)

after thinking it over afterwards, much later afterwards, it must have been a loose wire, because it was down around my ankles or slightly higher than that.

Q. Do you recall having observed that particular wire before this occasion?

A. Well, not that particular one. Mostly, the wires that I could see from my front room, I had observed those, but this particular spot, I hadn't, although I have been in that section, but I just didn't observe the wires.

Q. Was the sidewalk obstructed from time to time with wire?

A. I once saw it obstructed, and my neighbor, Mrs. Skewes,—it was from her window—and we called to her little boy who was outside to untie it. Some children had tied a loose end of wire just across the sidewalk.

Q. When was that with reference to this?

A. Well, it was sometime before, but I couldn't [124] be sure, several weeks before the accident.

Q. Did you observe any maintenance work being done around the area where you fell?

A. Yes, frequently. They had a man who trimmed shrubs, and another who mowed the grass, and another who watered it, and, oh, someone who hoed, and they had quite a few gardeners.

Q. Well, did they do anything to this barricade arrangement after this painting job was done?

A. No. If they did, I didn't see it, and I usually saw what was going on. I was outside a lot, and

(Testimony of Jean Dooley.)

have a very good view from all of my windows, but I didn't see him, if he ever came around, but from the looks of the wires, I would say that he never came around any more after then.

Q. Now, just what was your general condition in the hospital?

A. Well, when I arrived there, we had x-rays made, and I was told that it was broken.

I didn't know—in fact, my mind was a little—I just wasn't thinking about that. Well, anyway, that came to me as a shock when she told me I had to stay, because I had planned on coming back home. I thought—I didn't know—and then I mentioned the fact that I was pregnant, and he said [125] it was quite likely that I would lose the baby as soon as I had the operation.

Mr. Bateman: May it please the Court, I object to any testimony of the witness as hearsay.

The Court: The objection is sustained, and it is stricken.

Q. (By Mr. Guimont): Just what did you yourself observe or feel while you were in the hospital and how long were you there?

A. I was there either eight or nine days, and I had received shots several times daily every few hours. I don't know if it was the shots or my nerves, but anyway, everything in the hospital seems quite vague today, looking back on it. I was in great pain—I remember that—and I was under shock, and very worried about my children at home, and the one that I thought I would probably lose, and it de-

(Testimony of Jean Dooley.)

veloped that I didn't lose the baby, but it looked that way for quite some while.

Q. Now, then, did you return from the hospital after nine days or eight days?

A. Eight or nine days. I went home then.

Q. And when you got home, what did you do, or how did you get along? [126]

A. Well, I was in bed most of the time, or laying on theavenport in the daytime, but it was quite painful to move around. I usually stayed in the same spot for sometime, and as soon as I was able to get up and move around and get to the telephone—I think this was probably the second day after I had come home, the first or second—I called the office and reported the fact that I had broken my leg over the wires, and they had already heard about it. I talked to Mrs. Wilson, I am quite sure, and she called me back in a couple of hours and asked for the details. She said that she had to file an official accident return, so I told her the time of the day, and the spot where it occurred, and everything that she wanted to know, and when I mentioned where it had happened, she said: "Oh, I heard you fell down your steps." I said, "Well, where did you hear that?" And she said, "Well, I heard it."

So, just that, I wasn't near any steps.

Q. Now, when did you have the cast removed?

A. Four weeks thereafter, after my return.

Q. After you were home? A. Yes.

(Testimony of Jean Dooley.)

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Q. Now, when did you have the cast removed?

A. Four weeks thereafter, after my return.

Q. After you were home? A. Yes.

(Testimony of Jean Dooley.)

Q. And during that period of time, did you have help at home? [127]

A. Yes, my mother-in-law was there, doing all of the work.

Q. Now, how did you respond after that? I mean, what was your general health and condition?

A. Well, the pain was quite unbearable at times, although I had medication for that condition, and, well, for many months, the pain was very bad. But immediately preceding,—I mean, immediately after this—in fact, I began to feel it in the hospital—I was very nervous, and I guess I developed claustrophobia, and anyway, it was pretty hard to live with myself for many months thereafter.

Q. Has that condition changed any?

A. The claustrophobia itself is gone completely now, I think, but it went away shortly after the birth of the baby, but in general, I am more nervous than I ever was before, but I am working on that.

Q. How does your leg respond now?

A. Well, I find it very awkward, all the time, and quite painful most of the time, and it is stiff. There is a chronic stiffness there, and I feel it more at some times, than at others, but anytime I am sitting, if I move it frequently, it helps, but anytime it is still—I wake up at night and have to move it a few [128] times, and it doesn't bend as far as the other one, and I find that inconvenient in house-keeping, and on picking up things from the floor and other things.

Q. What is the appearance of your leg now?

(Testimony of Jean Dooley.)

A. Well, to me, I don't like the appearance. I think it is an inch smaller than the other, and the thigh itself seems to be quite flabby, and I have taken treatments for that, trying to restore it, but I don't seem to be getting anywhere.

Q. Could you display the knee?

The Court: I don't believe that is necessary. If she wants to take a picture of it to let some other tribunal see it, I do not need that aid. I would rather have her describe it as exactly as she can in words, because then they are in the record, and others, who might have occasion to review the record, would know as much about what she said, or the method of her conveying the idea that she had as I would.

Mr. Guimont: Yes, your Honor.

Q. (By Mr. Guimont): Mrs. Dooley, what is the length of the scar?

A. Well, about five inches, with my leg straight, and when I bend it, the scar is longer. It is over six inches then.

Q. How wide is it? [129]

A. Oh, probably three-quarters of an inch in one spot, and it tapers down then to a half inch, and toward the end, it tapers into a point.

Q. What is the color?

A. It isn't discolored too much, just some purple discoloration, and it has sunken spots, and raised spots in it.

Q. From where does it extend?

A. Oh, below and above the knee.

(Testimony of Jean Dooley.)

Q. It crosses the entire knee, does it?

A. Vertically, yes.

The Court: At what date was the last day when you wore a cast on that place?

The Witness: Well, I would have to think a minute. Well, about five weeks after November 5. It was the early part of December in '52.

The Court: That the cast was finally removed?

The Witness: Yes.

The Court: Since that time, you have had no skin contact at that place with any hard substance like a cast or metal or wood, or anything of that sort?

A. No. As a matter of fact, I can't touch it. It is very touchy.

Q. (By Mr. Guimont): And how does it feel over the site at the present time?

A. Well, I frequently hurt it. To any pressure on it, such as in a kneeling position, that is impossible to do. It feels as if there is something sharp there, and frequently, I will just slightly catch it against the bottom of the sink, like when washing dishes, and that seems to bother it, too.

As long as I don't touch it—but any pressure from a hard surface, it hurts quite badly.

The Court: Is there any swelling now about the kneecap?

The Witness: Not now. There has been.

Q. (By Mr. Guimont): The swelling has seemingly been removed? A. Yes.

(Testimony of Jean Dooley.)

Q. When was the last observation you made of swelling, Mrs. Dooley?

A. Well, it has been close to a year ago now, but my legs have veins in them now. I mean, it is capillaries, bursted capillaries, from the swelling. They used to swell so big. Even though it doesn't swell any more, it has left the purple marks, and bruises, where it used to swell so big.

Q. Do you recall what the weather was that [131] night?

A. I recall that it wasn't raining, and if it was cloudy or not, I don't know. I had on a short coat. It couldn't have been too cold.

Mr. Guimont: I believe that will be all.

The Court: I think at this time we ought to take a recess. There will be a recess for about ten minutes.

(Recess.)

The Court: You may proceed.

Cross Examination

Q. (By Mr. Bateman): Mrs. Dooley, you and your husband have an apartment in the same Lake Burien Apartments at the present time, do you?

A. Yes, we have.

Q. That is a large apartment house project, isn't it? A. Quite large, I would say.

Q. And in a general way, it is now a very attractively landscaped project, the grounds and all?

A. I think so, yes.

(Testimony of Jean Dooley.)

Q. Was it that way when you first came there in June of 1952?

A. Well, there has been improvements since [132] then.

Q. There have been a great many improvements in landscaping the lawn areas and the like, have there not? A. Yes.

Q. There are a great many tenants who have children in the apartment project?

A. Yes, most of them do.

Q. You, yourself, have three now?

A. Yes.

Q. And many of your neighbors have two or more children? A. Yes.

Q. Is that why you moved into the apartment project because they took children?

A. Largely.

Q. It is difficult to find housing sometimes for people with young children, isn't it?

A. I have heard so, although this was the first place we had inquired about.

Q. Did you live in this particular apartment that you were living in on November 5, 1952, from the time you first moved into the project in June of '52?

A. I don't understand that.

Q. I say, in June of 1952, you moved into these [133] apartments? A. Yes.

Q. And did you occupy the same apartment from the time you first moved in until after this accident? A. Yes.

(Testimony of Jean Dooley.)

Q. And that apartment was in building—what was the number?

A. I think it was building 5. I am not sure about that.

Q. It has a street number, however, and you had an apartment number which designates the building?

A. Yes.

Q. Would you designate on Exhibit 5, if you will please, by placing your initials, "J.D." in the building designated on that drawing that you occupied in which your apartment was located?

(Witness writes on Plaintiffs' Exhibit 5.)

Q. You are marking your initials in red pencil, are you?

A. Yes, that is right.

Q. During the summer of 1952, and the fall of 1952, this lawn building project was going on in the apartment house area, is that so?

A. Yes. [134]

Q. And these wire fences were maintained in general around all of the newly planted lawn areas?

A. They were maintained until about the month of September.

Q. Let me rephrase that.

They were installed around all of the newly planted lawn areas?

A. Yes.

Q. Now, the particular place where you fell, you have indicated that on Exhibit 5 in what manner?

A. Well, I was walking—

Q. Would you refer to Exhibit 5 and tell me how you have designated the place where you fell?

(Testimony of Jean Dooley.)

A. Well, I have designated the spot here by a red cross and the initial "J".

Q. By a red cross?

Can you tell me about how far that is from the building in which your apartment was located?

A. As far as the length of this room or possibly ten more feet.

Q. Now, isn't it so that that sidewalk or the place where you have indicated with a red cross is just a matter of five or six feet from the building in which your apartment was located?

A. From the building, but my apartment was on [135] the far side of that.

Q. Now, where was your apartment with respect to the place where you fell?

A. Probably 60 feet. You would go up the main sidewalk and turn to reach the entrance.

Q. However, your bedroom window to your apartment is probably less than 25 feet from this spot, is it not?

A. Possibly that, 25 feet.

Q. And during the time you lived there, you passed that particular spot that you have designated as the place where you fell many times, is that not so? A. Yes.

Q. Daily you went past there, did you not?

A. Daily, but from the other walk. I was coming through a different walk this time, but the spot was passed daily.

Q. Well, the red cross which I see indicated on

(Testimony of Jean Dooley.)

Exhibit 5 as marking the place where you state you fell is right at the intersection, is that correct?

A. Yes. It is at the corner, as I was turning the corner.

Q. Well, now, daily you passed that very spot, is that not so? [136] A. Yes.

Q. And sometimes you would pass it many times during the day?

A. I didn't make a turn as I was passing it like I did at this particular time.

Q. But irrespective of whether you went out your front door and down along the main sidewalk or whether you came out the back door and went out along the walk you were proceeding at the time of this accident, you passed within two or three feet of this very spot? A. That is right.

Q. And that was the main route you used to go to the store? A. Yes.

Q. Or to your automobile? A. Yes.

Q. Or to take your children over to the play-field?

A. No, just to the store daily, was about all.

Q. So, in the course of your life there at the apartment, you would pass that spot many times and probably several times in one day?

A. Possibly, yes.

Q. Did you see this wire down along the walk, [137] as I believe it was Mrs. Hart testified she had seen it during the week before this accident occurred?

(Testimony of Jean Dooley.)

A. No, I can't say that I noticed that particular wire before the accident.

Q. But you went by that spot many times, didn't you, during that week? A. Yes.

Q. When you left your apartment on the evening of the accident to go to the meat market, did you look at the clock before leaving, or at a clock or watch before leaving? A. Yes.

Q. Was it your own watch that you consulted, or a kitchen clock?

A. It was a clock in my house.

Q. And did you leave immediately then for the store?

A. Well, I deposited my two children next door, across the hall, before leaving.

Q. Well, what time did that clock say when you looked at it last before leaving?

A. Actually, I couldn't tell you in minutes, except for the fact that I had approximately fifteen minutes to get to the store. I left my children there, and that probably took three or four minutes, and then [138] left shortly thereafter.

Q. Did you put on your coat after that?

A. I don't know if I had it on when I went over, or not.

Q. Well, did you have your coat on when you looked at the clock?

A. I couldn't be sure of that.

Q. Did you anticipate — you weren't wearing your coat around in your apartment, were you?

A. No. Either I took the children over and came

(Testimony of Jean Dooley.)

back and got my coat, or else I had it on to start with, but I am not sure.

Q. But in any case, you looked at the clock, and it said about fifteen minutes before six?

A. Yes.

Q. And then you took your children over to your neighbor lady's apartment? A. Yes.

Q. Now, before doing that, did you inquire to see whether or not she could care for them?

A. Yes, I had just been over and asked her.

Q. So, on the first trip over, after looking at the clock, you asked if she could care for them for a few minutes?

A. I don't know when I looked at the clock. All [139] I know is that I had a short time to get to the store before it closed.

Q. Well, to the best of your recollection, did you put on your coat then after taking your children over?

A. I am afraid I couldn't answer that.

Q. Well, did you go and get your purse then so you would have some money at the store?

A. Unless I had the money in my pocket. I just don't know. It has been a long time.

Q. Were there any other things you think you did or may have done before you left the apartment after checking the time? A. No.

Q. You can't think of any others?

A. No.

Q. Did you stop to fix your face, as so many

(Testimony of Jean Dooley.)

women do, or comb your hair before going out to the store? A. Not that I recall.

Q. Then you left the apartment by the rear door, the basement door?

A. By the inside entrance, which is next door to my door in the hall, that leads to the basement.

Q. You stepped out of your own door and walked down into the basement of the building?

A. Yes.

Q. And then left the building through the——

A. Outside basement exit.

Q. Will you mark on Exhibit 5 about where that door is in the building in which you have indicated your apartment was?

A. Well, I couldn't be sure. Do you mean the inside door that I went down?

Q. I mean the door outside, from the basement to the exterior of the building, the basement door.

Just put a "BD" on it, for "basement door".

(Witness marks Exhibit 5.)

Q. Now, that is not the main entrance of the building, is it? A. No.

Q. That is to the rear side of the building?

A. Yes.

Q. And from there, you proceeded through a drying yard? A. Yes.

Q. Is that yard commonly used at night by the tenants?

A. It was quite well lighted there.

Q. In the drying yard?

(Testimony of Jean Dooley.)

A. I don't know if they use it or not. It was [141] convenient.

Q. And it was quite well lighted?

A. Yes.

Q. By "convenient", you mean that that formed a convenient exit to the building?

A. Considering that I wanted to go to the basement first.

Q. What did you want to go to the basement first for?

A. I had a twofold purpose. One was to survey the washing facilities. They were in the basement. I thought of washing later if they weren't in use.

The other, I was avoiding a worrisome neighbor.

Q. You mean a neighbor close to your front door? A. Yes.

Q. Then, you could have left by the front door or main exit to the building except for those two situations? A. Yes.

Q. Now, is the main exit, the front exit of the building, any more amply lighted?

A. No more so.

Q. Did you do anything else then before leaving? [142] A. No.

Q. Would you indicate by a red-dotted line on Exhibit 5, your route, from the time you left the basement door until the time you fell, as nearly as you can recall?

A. I can recall it very clearly.

(Marks Exhibit 5.)

Q. Would you estimate that by the time you

(Testimony of Jean Dooley.)

had reached the basement door down there, and had left to go outside, that possibly six, seven or eight minutes had elapsed since you first looked at the clock and then placed your children with the neighbor and then prepared to go to the store?

A. From the time I left my children, not more than two minutes had elapsed from the time I was through the basement and outside.

Q. But from the time you looked at your clock and took your children over to the neighbor lady and arranged for her to care for them, would you estimate that as much as six, seven or eight minutes may have elapsed? A. Possibly.

Q. The meat market, incidentally, to which you were going, closed at six o'clock, did it not?

A. That is right. [143]

Q. You were then in a considerable hurry to get to the meat market before the closing hour?

A. No, I had about—as I have said, all along, the time element here is strictly approximate. I am not sure, but I had ample time to get there. I can walk it in two minutes, and not more than three, and as I recall it, I had close to ten minutes to get there.

Q. Didn't you testify at the time your oral examination was taken, that you were hurrying?

A. I was hurrying.

Q. Why were you hurrying?

A. Well, because I was just walking in a hurry.

Q. Weren't you hurrying because you were fear-

(Testimony of Jean Dooley.)

ful that the market might close before you got there?

A. No. Actually, I don't walk fast any more, but that was my first time out of the house that day—and more or less for the exercise.

Q. Oh, you were just exercising? You weren't really hurrying to get to the market?

A. Well, no particular reason for hurrying, just hurrying.

Q. Do you recall the occasion on August 27, 1953, when your oral deposition or oral examination was taken in Mr. Guimont's office? [144]

A. Yes.

Q. Do you recall whether or not at that time you testified that you were hurrying to get to the meat market before it closed?

A. Well, I don't recall having said that. I do know that I was en route to the meat market, and I was hurrying, but I had ample time to get there.

Q. Is it your testimony then that you may have so testified at that time that you were hurrying to get to the meat market?

A. If you have it on the record that I said it, I presume that I said it, but actually, I was hurrying, and I hoped to get there before it closed, but I did have ample time.

Q. This walk along which you have indicated your route ran from the time you left your basement door until you reached the point where you fell formed one side of a rather long triangle, as

(Testimony of Jean Dooley.)

far as the direct line of your route was concerned, did it not? A. That is right.

Q. In other words, it would have been considerably shorter for you to have proceeded straight ahead as you came out of the drying yard and proceeded across the newly planted area there, would it not?

A. No, that wouldn't have been very sensible, [145] for the reason that there are cars at night there parked so densely that most people can't park at all. They have to park down the street, but had I gone that route, I couldn't have got through the cars there.

Q. Do you recall whether or not there were any cars parked there that evening?

A. Not that evening, I didn't look, but I know every evening they have considerable parking trouble.

Q. It would, however, have been considerably shorter for you at any time you walked along the path to turn to the right and walk across the grass area?

A. No, it wouldn't have, because at the end of that path, there was a drop of about four feet. It is a little rockery about four feet between the lawn and the sidewalk.

Q. Would you indicate on the drawing where this drop-off is, just write "drop-off"?

A. Yes. (Writes on Plaintiffs' Exhibit 5.)

That is near the laundry entrance, if I marked it correctly.

(Testimony of Jean Dooley.)

Q. Well, would you consider that mark again, Mrs. Dooley? Haven't you indicated the drop-off to [146] be right across your route and path?

A. Possibly I marked it wrong.

Q. Would you check that again, please?

A. I will check it. Oh, I certainly did mark it wrong. (Marks Plaintiffs' Exhibit 5.)

Q. You have lined through the original one you used to designate drop-off.

The present mark as it now stands is out at the edge of the Southwest 136th Street?

A. Yes.

Q. Well, now, isn't it true that this newly planted grass area which adjoined the sidewalk along which you were proceeding caused you to go a matter of 50 feet farther out of your direct line of travel from the apartment house building to the sidewalk nearest where you could approach directly to the stores?

A. Well, if I understand that, it is very far from true.

I know that I was walking down the middle of the sidewalk and at the corner was where I fell. There was wire in my path.

Q. Now, did you state that you fell as you turned?

A. As I was about to, or in the process of. [147]
I am not sure just which step I fell on.

Q. Do you know which foot first came in contact with some object?

(Testimony of Jean Dooley.)

A. No, I wouldn't know. I just felt wire at my legs.

Q. Whereabouts on your legs?

A. It was low, low enough, below my knees, I am sure, and somewhat above the ankle, probably halfway.

Q. And which leg, do you recall?

A. I don't recall. I was aware that I was going to fall. I do know that.

Q. When you finally came to rest, were you opposite the telephone pole, or just where were you with respect to the telephone pole at that little corner when you came to a stop, or a rest?

A. Well, I was laying full length toward the parking area, and with my feet pointed in the direction I had come from.

I was on the corner, right at the corner, and that is near the telephone pole.

Q. You were lying full length, you stated?

A. Yes.

Q. And your head was in which direction?

A. Toward the parking area. [148]

Q. Well, now, that is a large parking area there?

A. Well, then, toward the main highway, then.

Q. Toward the main road for the intersection of that area parking road and the main road?

A. Toward 136th Street.

Q. Then opposite the direction from which you were walking as you proceeded along the park, that

(Testimony of Jean Dooley.)

is not opposite, but approximately 90 degrees to the right?

A. I don't know my degrees that well. I am sorry.

Q. Well, as you were walking along the sidewalk, your direction was at right angles from the position in which you found yourself lying after you had come to a rest?

A. I am sorry. I just don't follow the statement there.

Q. Does the position in which you were lying after you came to a rest indicate that you had turned or changed your direction?

A. Well, I would say that I had to either—I would say it was just as I was beginning to turn from the position I found myself in.

Q. And where was the telephone pole with respect [149] to your body?

A. To my right.

Q. To your right? A. Yes.

Q. Immediately to your right, or was it ahead of you, or behind you, or where was it?

A. Somewhat ahead, and almost even with me.

Q. Somewhat ahead?

A. Well, probably out like this (indicating). Possibly I could have touched it with another foot.

Q. You are indicating that you could have touched it?

A. I was on the sidewalk. As the sidewalk makes the corner turn, I was on the sidewalk, and

(Testimony of Jean Dooley.)

that is at the right. That is as well as I can explain it.

Q. In other words, the telephone pole was on your right? A. That is right.

Q. And could you have reached it with your hand stretched out straight?

A. I didn't try and I don't suppose I could. I do know that I had the thought in mind, as I was trying to pull myself up, of pulling on this pole, but I couldn't get on my foot, and couldn't get to it, so I must have been a few feet from it. [150]

Q. When you first came in contact with some object, did you fall immediately?

A. No. Actually, I stumbled several steps before I did fall.

Q. And several feet from where you first stumbled until you came to a rest?

A. Or a couple of steps or something. Anyway, I had time to know I was going to fall. I do remember that.

This was very specific, and I am afraid I can't be too specific about these things, but I don't recall.

Q. Is there any reason why you were unable to catch yourself from falling?

A. No, I just fell. I knew I was going to fall, and my main thought was to try to catch it on my hands and not fall flat.

Q. I mean, when you first came in contact with this object, let's say the wire, is there any reason

(Testimony of Jean Dooley.)

why then you couldn't have caught yourself and prevented yourself from falling?

A. Oh, I couldn't have prevented it.

Q. Is there any reason why you couldn't?

A. Well, I felt the wire first with my leg, and then my feet were entangled, and my feet were engaged [151] and I knew I was falling.

Q. Why didn't you just stop?

A. I think I did. I fell about that time.

Q. I mean, just stop your forward motion, or stop proceeding forward? Is there any reason why you didn't?

A. Well, I was stumbling forward.

When I tripped, I stumbled forward, and was about to regain my footing, I think, when I plunged down on this knee, and that is when it happened. But I can't describe that accurately.

Q. Now, did you testify that this wire was loose?

A. It was loose. I am sure it was loose, because I didn't see it as I fell. I saw it immediately after I had fallen, and there was a loose wire.

I couldn't say just how long it was, but there was quite a few feet of it, and I was in the middle of the sidewalk.

Q. If this was a loose wire then, it didn't offer you any immediate or abrupt existence, did it?

A. I was entangled in it. This wire, when it is loose—I have seen it many times in other spots——

Q. Could you just answer my question? If this

(Testimony of Jean Dooley.)

was a loose wire, it didn't offer you any immediate and [152] abrupt resistance to your forward progress, did it? A. It did.

Q. Well, then, was the wire loose, or was it tight?

A. I didn't see it before I fell. I have always figured it was loose. I know it was loose, because it was loose when I pulled myself up from the fall, and it is quite possible that when it is loose, it curls. These wires always coil back to their natural shape, and possibly I stepped into one of the coils.

Q. I think you have gone somewhat astray from my question. You say you didn't see this wire before you fell? A. No.

Q. And you say it offered abrupt and immediate resistance to the forward progress as you were walking along there?

A. Well, I would just say I tripped, and that the tripping caused me to stumble forward a few times, and I fell.

Q. Well, did the wire give with your forward progress, as you came in contact with it?

A. I couldn't say.

Q. You don't know, then, do you, whether the [153] wire was loose or tight when you tripped?

A. I figured if it was tight, it would have to have been tied to something on the other side, and it would have been higher up, no doubt, but it was around my feet.

(Testimony of Jean Dooley.)

Q. Just answer my question. You didn't see it, did you, before you fell? A. No.

Q. And you state it did offer immediate and abrupt resistance to any forward progress that you were making at that time?

A. I guess so.

Q. Did you have any sensation of pain when your leg or legs hit the wire?

A. Not when they hit the wire. When I hit the pavement——

Q. I take it that if you had stumbled several steps before actually falling, you started to stumble before you had reached the point on the sidewalk opposite the telephone pole, is that correct?

A. It was very close to the telephone pole and at the corner. I felt the wire and stumbled probably just a couple of steps ahead and fell.

Q. By "a couple of steps ahead of you", you mean that the telephone pole was still a couple of steps [154] ahead of you along the path of the sidewalk at the time you first stumbled?

A. I am sorry. I am trying to be cooperative, but I just don't understand that.

Q. Will you indicate on Exhibit No. 5, with a black pencil, probably—make a dot or something a little larger than a dot, probably a little cross, indicating where you believe you first came in contact with any object as you were walking along?

(Witness writes on Plaintiff's Exhibit No. 5.)

Q. Now, have you indicated a position different

(Testimony of Jean Dooley.)

from that where you believe you were when you finally came to rest?

A. Well, it is a little closer. I mean, where I came to rest was two large steps probably ahead of this spot.

Q. I wonder, Mrs. Dooley, if you would be good enough to draw a short line to that spot and designate it by a number one? That is for clarity.

(Witness draws on Exhibit No. 5.)

Q. Exhibit No. 8, the picture which you took some five or six weeks after the accident, is that the way that this wire barricade along the walk that you were proceeding along looked when it was in proper [155] condition prior to the accident?

A. This picture isn't very plain. I can see it, but there is a stake missing.

In fact, without the rest being visible, I couldn't tell you that, the rest of the corner, but when it was first installed, this covered the corner completely, but it isn't there now. It wasn't there the first time I noticed it after the accident. The stakes were gone, and this long piece of wire from the last pole there had been wrapped around the telephone pole the dangling wire which I surmised afterwards was what I had fallen on.

Q. Your testimony is then that prior to the accident, prior to the time you fell, there was another stake there at that corner?

A. Many weeks prior. I don't know just what the condition was just at the time I fell.

(Testimony of Jean Dooley.)

Q. Do you know what it was the day before you fell? A. No, I don't.

Q. Did you pass that way the day before you fell?

A. I usually go out every day, unless it is raining. I don't know if I went the day before, or not.

Q. You don't recall seeing it in any other condition the day before you fell?

A. I usually watch just the ones around the area where my children play.

Q. Did you testify though that you went by that way daily? A. Yes.

Q. When you stated, Mrs. Dooley, that there was no more maintenance on these fences after the time the painters were there, don't you really mean by that that you didn't see anyone maintaining these fences after that time?

A. That is what I mean. I didn't see him any more, and from the looks of the fences, I was pretty sure no one had, or else they had been torn down again as soon as he had.

Q. What was that?

A. I meant that I didn't see him any more. Possibly I could have missed him, but from the appearance of the fence, I would say that no one had worked on it.

Q. Are you referring to the particular fence now that is shown in Number 8, or just the general condition?

A. The general condition around my house.

Q. Calling your attention to Exhibit No. 5 again,

(Testimony of Jean Dooley.)

[157] do you recall the existence of a light at the intersection shown on that drawing, the intersection of the street there designated as 137 or 136th Southwest and the private drive off that into this parking area, do you recall that street light at that intersection? A. No, I don't.

Q. Do you know whether or not there is a light there?

A. I know that once I passed by the spot after I was able to be up and around for the purpose of seeing just how dark it was. This was after I had talked to you at the deposition, and for the purpose of seeing how the lights were situated, because I had been asked then and didn't really know, and the one on the building about 60 feet from there is the only one I saw.

Q. Isn't there a light at the intersection? I believe you have your finger on it now, and I have attempted to describe it. Isn't there a street light—let's call it on a light pole—at the present time?

A. I have never noticed it.

Q. And yet you have been out there in that area to check the lighting?

A. That is right. [158]

Q. Can you testify that there is not such a street light there now?

A. No, I can't. I can testify that when I made this survey of the lighting, I didn't notice it. Maybe I noticed it, and don't remember it now, but I would have remembered it, if I thought that that light was sufficient enough to affect this spot

(Testimony of Jean Dooley.)

I was considering, but there are many cars parked between that end and this spot.

Q. Right now, though, you don't know whether there is a light at that intersection?

A. No, but I never noticed it.

Q. Did you check the lighting in this spot in and near where you fell?

Have you been out there in the dark to observe the condition of the light in that area?

A. I have been out several times since then and noticed that that spot is completely obscured by what I thought at the time was this high wooden fence over the sandbox.

Q. What, if anything, have you noticed about the light from the floodlights in the market area?

A. I have never noticed them.

Q. Have you observed whether or not they cast any light or reflected illumination on the sidewalk in [159] the immediate vicinity where you fell?

A. No. As I said, the times I have checked it, several times, it was quite dark in that spot, so possibly they weren't on. I don't know.

Q. Do you know whether or not they were on then?

A. No. I have never noticed them.

Q. Have you ever observed that area when you knew that they have been on?

A. I never knew they had floodlights until you brought it to my attention.

Q. At the present time, you care for your three children, do you, Mrs. Dooley?

A. Yes.

(Testimony of Jean Dooley.)

Q. And did you, last summer, when your husband was in Alaska? A. Yes.

Q. That scar that you referred to on your knee is below the level of your skirt length, the ordinary skirt length, is it not?

A. No. It is above.

Q. I mean, it is above. A. Yes.

Mr. Bateman: I have no further questions, your Honor. [160]

The Court: Any redirect examination?

Mr. Guimont: I don't believe I have any further questions.

The Court: You may be excused from the stand, Mrs. Dooley.

(Witness excused.)

The Court: Call the next witness.

Mr. Guimont: We rest, your Honor.

The Court: The Plaintiff rests. The Defendants may now proceed.

Mr. Bateman: May it please the Court, and come now the Defendants, United States of America and Carroll, Hedlund & Associates, Inc., and move the Court that the plaintiffs' complaint be dismissed with prejudice as to both of the defendants for the reason that the plaintiffs have not produced sufficient evidence to establish a cause of action against the defendants, or either of them, and if the Court please, I should like to argue the motion.

The Court: I am sorry. I do not wish to hear arguments. The motion will be denied.

Mr. Bateman: Exception.

The Court: Allowed.

Mr. Bateman: The defendants will call Mr. Kelvin Greenstreet. [161]

KELVIN GREENSTREET

upon being called as a witness for and on behalf of the Defendants, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Bateman): Will you state your full name? A. Kelvin Greenstreet.

The Court: Spell it.

The Witness: K-e-l-v-i-n G-r-e-e-n-s-t-r-e-e-t (spelling).

The Court: You may proceed.

Q. (By Mr. Bateman): And what is your occupation, Mr. Greenstreet?

A. Chief property manager, Federal Housing Administration.

The Court: Where?

The Witness: Seattle.

Q. (By Mr. Bateman): How long have you been so employed?

A. Since late 1949 in that particular capacity, and with the Administration since 1939.

Q. Showing you Plaintiffs' Exhibit 5, do you recognize that drawing? A. Yes. [162]

Q. In your capacity as property manager for

(Testimony of Kelvin Greenstreet.)

the Federal Housing Administration, have you had anything to do with the Lake Burien Heights Apartments Project?

A. Yes, it is under my jurisdiction. It is my responsibility to see that the Federal Housing Commissioner's interests are upheld from a management standpoint, since he is the owner.

Q. And, referring again to Exhibit 5, is that the area of the Lake Burien Heights Project?

A. Yes.

Q. That property comprised within the property lines as shown on that exhibit is owned by the Federal Housing Administrator?

A. Yes.

Q. And, in a general way, will you describe the Project, the approximate number of buildings, the area, the number of tenants, something of that nature?

A. There are 544 dwelling units in 44 apartment buildings, and then there is also a nursery school and a community center, which we built about a year and a half ago. It is called a garden-type project, designed principally for families with children to serve the gap between the single family house and the downtown apartment house type where there [163] is very limited ground.

Q. Children are encouraged in the project, are they?

A. Yes. It was designed for families with children. A large number of two-bedroom type units were provided for that reason. In fact, there are 24 three-bedroom type units.

(Testimony of Kelvin Greenstreet.)

Q. What, if any, landscaping is there in it or on the project site?

A. All of the areas between buildings are intended to be well-landscaped, to be pleasing to the eye, as well as for ease of maintenance and cleanliness and safety.

Q. Is there a lawn area in that project?

A. Yes. We had occasion recently to pull a figure out of the hat as to exactly how much lawn area there was for sprinkling purposes, and, as I recall, the figure was 144,000 square feet.

Q. Was there in 1952 any concerted program for the development of the lawn areas in that project?

A. Well, yes. We were improving the lawn areas, replacing some of the lawns that were not growing properly. We were also replacing shrubbery.

Q. Do you know by whom that work was done?

A. Miller-Hansen Landscape Contractors. [164]

Q. And what, in a general way, was the work that they were to perform?

A. The scope of their work involved not only new planting beds and rebuilding lawn areas, but also installing additional walks for tenant convenience, and increasing the turns at sidewalk intersections to make it safer for easier turns, also providing more space around entrances for storage of kids' bikes, et cetera, to keep them out of the way of traffic.

(Testimony of Kelvin Greenstreet.)

Q. Do you know when that contract was performed?

A. Well, there were two contracts, one of them was under way in '52. I don't have the dates with me.

Q. Do you know by whom the project was designed when it was originally constructed?

A. Miller & Ahlson, Architects.

Q. Do you know anything about Miller & Ahlson, Architects?

A. They designed several other similar projects. They are well-regarded in the area as designers. We found them cooperative and able.

Q. They practice here in Seattle, do they?

A. Yes.

Q. Do you know whether or not they also laid [165] out the design for the exterior, or outside, lighting within the project site?

A. I can't say as to that. They may have done it themselves, or hired it done. It was their obligation, however, to provide proper lighting. That was one of the requirements.

Q. Did you have anything to do with the approval of their designs in that respect?

A. Well, I was the appraiser. I appraised the property for the original mortgage, and in my analysis, I had certain recommendations to make as to living unit designs, as well as placement of buildings and general layout of the project.

Generally, I might have come in contact with it.

(Testimony of Kelvin Greenstreet.)

I can't remember exactly what I might have said about lighting at the time, but it was considered.

Q. And, to your knowledge, it was an obligation of the architects, Miller & Ahlson, to handle that as part of their architectural services on the property?

A. Yes, it was, very definitely.

Q. What are the present arrangements, as far as the management of the project is concerned?

A. The project is now being managed under a [166] contract with Carroll, Hedlund & Associates as our broker.

Q. How long have they been managing the area? A. Since August, 1950.

Mr. Bateman: That is all. You may inquire.

Cross Examination

Q. (By Mr. Guimont): You were in charge of the project, then, prior to Carroll, Hedlund & Associates taking over the managership in your stead?

A. The question is a little difficult to answer since you have used the words "in charge of".

Do I understand the question properly?

Q. Yes, I believe you said you had been their chief property manager for Federal Housing Administrator since 1949? A. Yes.

Q. How long has the project been in existence?

A. Well, the project was completed about 1948. I believe first occupancy came along in 1948.

We acquired the project in August, 1950. That

(Testimony of Kelvin Greenstreet.)

may be the date you are looking for. We didn't acquire it until that time.

Q. And then, after you acquired it, you immediately turned it over to your agent, Carroll, [167] Hedlund?

A. Yes. The day we acquired it, they became the brokers.

Q. And their duties as brokers, will you briefly tell us what they do out there?

A. Under our supervision, they manage and have complete charge of the ground crew, the housekeeping crew as to the unit, and are our agents of record with respect to hazard and other types of insurance. They are completely our managers and representatives and are responsible for the care of the project.

Q. Now, you speak of having in 1952 made an effort to improve the lawn areas. Who hired the people that were doing the work? I believe you called them Hansen Landscape Contractors?

A. Miller & Hansen. Mr. Connor, Director of Administrative Services, Washington, he actually signed the contract.

Q. For the improvement of the property?

A. Yes.

Q. And then you authorized your agent, Carroll, Hedlund & Associates, to carry out the improvement?

A. No, no. Miller-Hansen did all the improvement work. Carroll, Hedlund are maintaining it,

(Testimony of Kelvin Greenstreet.)

if I may add. They are the maintenance. They furnish a maintenance crew.

Q. I see. They maintain the grounds, do they, the sidewalk areas? A. Yes.

Q. The drying areas?

A. I might add, we call them a unit of work. This type of work Miller-Hansen did was a unit of work that was beyond ordinary maintenance. It was in the way of refurbishing and improving and bettering the project.

Q. Then who had charge of the lawn cutting?

A. The lawn cutting was Carroll, Hedlund & Associates.

Q. And the lawn watering? A. The same.

Q. And had you been out to the project yourself? A. Yes, regularly.

Q. And when you were out there, what did you observe about the planting of lawns and the like?

A. Work was progressing satisfactorily.

Q. And did you have occasion to visit the area in the vicinity of the Dooley apartment as shown on Exhibit No. 5? [169]

A. I don't recall any specific inspection I made of that area.

Q. In your inspection tour of the premises generally encompassed in the project, do you recall anything about the barricading of the areas newly planted? A. Yes, I remember seeing them.

Q. And did you ever observe anything about them in any portion of the project that was not up to what we might call snuff?

(Testimony of Kelvin Greenstreet.)

A. I have never had to report that condition.

Q. Did you ever hear of any reports of the barricades being down or knocked over?

A. Never received a report of it.

Q. And did you ever hear of any accidents occurring to any of the tenants?

A. No, no report made of it.

Q. Who would receive that kind of report?

A. Carroll, Hedlund.

Q. How often did you visit the project?

A. Depending upon the need. I was there anywhere from daily to weekly.

Q. Would that have been in 1952, in November?

A. Yes.

The Court: Do you have substantial further [170] cross-examination?

Mr. Guimont: No, I believe I am finished with this witness.

The Court: If you have just a few questions, I don't want to interfere at this time. If it were substantial——

Mr. Guimont: No. I believe this will conclude my cross-examination.

Mr. Bateman: I have just one additional question.

Redirect Examination

Q. (By Mr. Bateman): In connection with the drawing that you hold there, Plaintiff's Exhibit No. 5, Mr. Greenstreet, that drawing is prepared of the site as it actually exists at the present time, so far as designations are made on that drawing?

(Testimony of Kelvin Greenstreet.)

A. As I understand it, this is the way the project exists as of February 15, 1954. That is the date shown here on the plans itself.

Q. Do you recall the purpose for which that was prepared?

A. Yes. We ordered this topographical map made, so that we might install a new lawn sprinkler system. [171]

Q. And that was prepared by the engineering firm shown on the corner of the drawing?

A. American Engineering Company was the contracting engineer, yes.

Q. And that is shown on the drawing?

A. Yes. It is very vague, but it is here.

Q. Now, referring to the area where you will find some red marks, et cetera, on this drawing, in that general area do the topographical lines indicate that the area is generally level? A. Yes.

Mr. Bateman: No further questions.

Mr. Guimont: No further questions.

The Court: You may be excused.

(Witness excused.)

The Court: The Court will be adjourned until tomorrow morning at ten o'clock.

(At 4:30 o'clock p.m., Wednesday, March 10, 1954, proceedings recessed until 10:00 o'clock a.m., Thursday, March 11, 1954.) [172]

Seattle, Wash., March 11, 1954, 10:00 o'clock a.m.

The Court: You may call the next witness, Mr. Bateman.

Mr. Bateman: May it please the Court, the defendants at this time will call Dr. Duncan.

The Court: Mr. Bateman, was it the wish of the defendants to waive their opening statement?

Mr. Bateman: Yes, your Honor.

DR. WILLIAM R. DUNCAN

upon being called as a witness for and on behalf of the Defendants, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Bateman): Doctor, will you state your name, please?

A. William R. Duncan.

Q. And what is your address?

A. 3724 Cascadia Avenue, Seattle, Washington.

Q. And do you maintain an office in Seattle?

A. Yes, sir; I do at 1607 Medical-Dental Building, Seattle, Washington.

Q. What is your occupation?

A. I am an orthopedic surgeon. [173]

Q. Do you practice in Seattle?

A. Yes, sir; I do.

Q. Are you licensed by the State of Washington?
A. Yes, sir; I am.

Q. What training have you had, Doctor, in that field?

(Testimony of Dr. William R. Duncan.)

A. I am a graduate of McGill University. I had two years of internship, three years of residency in orthopedic surgery, three and a half years of Army experience in orthopedic surgery.

I am certified by the American Board of Orthopedic Surgery, and am a member of the American Academy of Orthopedic Surgery.

Q. Have you had occasion to examine the plaintiff in this action, Jean Dooley, in a professional capacity? A. Yes, sir, I have.

Q. On or about what date?

A. On February 1, 1954.

Q. And what was the nature of the examination that you made?

A. I took a complete history, including the past medical history, her complaint and did an examination, and took X-rays. [174]

Q. What, if anything, did you find?

A. I found that Mrs. Dooley had had an injury on November 5, 1952, when she had tripped over a wire. She had sustained a fracture of the left kneecap. She was treated by Dr. Paul Ruuska. An open operation and the repair of the kneecap was done.

At the time of my examination, the fracture was solidly healed in good position. There was full function in the kneecap except for loss of the last 30 degrees of flexion, of full flexion. X-rays showed solid healing. There was no arthritis present in the joint.

Q. Did you form an opinion as to the quality of

(Testimony of Dr. William R. Duncan.)

the results achieved in reducing or setting of that fracture? A. Yes, I did.

Q. What is that opinion?

A. I felt that she had had an excellent reduction, and had had an excellent result from the treatment of a fractured patella.

Mr. Bateman: You may inquire.

Cross Examination

Q. (By Mr. Guimont): Doctor Duncan, you took X-ray pictures, did you? [175]

A. Yes, sir; I did.

Q. What did you find the X-ray pictures disclosed with reference to the patella?

A. Anterior-posterior—that is front and back and side views of the left knee showed a healed fracture of the mid portion of the patella.

The fragments were healed in excellent position. There was a slight irregularity of the under surface of the patella.

No arthritic changes were seen. The joint space was well preserved.

The Court: That is what you found when you examined?

The Witness: Yes, sir.

Q. (By Mr. Guimont): Now, Doctor, did you say you did see a slight irregularity showing on the X-ray pictures of the under surface of the patella?

A. Yes, sir.

Q. What effect would that have on the patient, that irregularity of the under surface of the patella?

(Testimony of Dr. William R. Duncan.)

A. Well, this irregularity was so slight that it should have no effect upon the patient.

Q. If the patient complained of pain on kneeling, would you feel that there had been any [176] difficulty—I mean placing her weight on her knee, do you think that that slight abnormality under the patella is contributing to the pain that she complains of?

A. I am sorry. You mentioned first pain on kneeling and then pain on weight-bearing. Which did you mean?

Q. Well, when she kneels and places her weight on the patella.

A. On the kneecap?

Q. On the kneecap?

A. Well, in the kneeling position, it is very difficult to put the weight on the patella. The weight comes on the upper tibia unless one gets on all fours and bends the knees up, but on straight kneeling, the pressure comes on the tibia, and I would not associate it with the fractured patella.

Q. Is the patella a movable bone area?

A. Yes, sir; it is.

Q. And did you find any crepitus or grating in the kneecap?

A. No, sir; I did not, as I recall.

Q. Now, would this fracture be as severe, Doctor, as a break in one of the long bones of the leg?

A. No, sir. [177]

Q. Do you think that the site of the fracture adds any additional difficulty to this type of frac-

(Testimony of Dr. William R. Duncan.)

ture other than as compared to site of a fracture, for instance, in the middle of the femur?

I am trying to find out, if, in your opinion, a fracture of the joint area, such as this, has any greater severity in the after effects on a patient than a fracture in another area of the leg?

A. Not this particular fracture, no, sir.

Q. You don't think that the mechanism of the knee is such that a fracture in the patella causes and is apt to cause a greater future difficulty than if this fracture were, for instance, in the tibia?

A. Well, I think you have to qualify the type of fracture that you are talking about in the patella. If it were a shattered patella, badly comminuted, which healed with gross irregularity and the fragments were not removed, then you have a more serious problem than a fractured tibia.

Q. To what did you attribute the slight irregularity of the under surface of the patella?

A. Well, that I attribute to the ever-present inability to accurately replace and maintain the fragments in perfect alignment, that is, to maintain them without a few millimeters' shift one way or the [178] other. It is sometimes done, but usually we don't even approach this excellence in the result.

Q. Now, Doctor, did you find any limitation of motion in the knee?

A. Yes, sir; I did.

Q. What was that?

A. There was full extension—that is, straightening of the knee—present in both knees. There was

(Testimony of Dr. William R. Duncan.)

full flexion of the right knee. The left knee flexed to 45 degrees.

The Court: Now, will you indicate for all present, by your leg motion, what you mean by that last statement—flexion and limitation?

The Witness: (Demonstrating): This, your Honor, is full flexion, which makes an angle of approximately 30 degrees at the knee. That is this angle in here (indicating) would be approximately 30 degrees, which is considered full flexion, and which she had on her normal side.

On the affected side, she had flexion so that this angle made 45 degrees. Bent to a right angle, would be 90 degrees, and she bent to 45 degrees, demonstrating a loss of full flexion of approximately 15 degrees.

Q. Now, did you measure her limbs, the [179] circumference of her limbs, Doctor?

A. Yes, sir; I did.

Q. And what did you find in the measurements of the right and left limbs?

A. I found that the right thigh measured 15½ inches five inches above the kneecap, and that the left thigh measured 14½ inches at the same level, indicating a difference of one inch five inches above the kneecap.

Q. Was that significant, Doctor?

A. It indicates that there is accuracy of the quadriceps mechanism, which has not as yet returned, that is, the volume has not as yet returned.

Q. What causes that atrophy? A. Disuse.

(Testimony of Dr. William R. Duncan.)

Q. And do you feel that it is going to be permanent?

A. No, sir; I do not.

Q. In view of the fact that your examination was in February of 1954, and that this injury was in November of 1952 and there is still atrophy present, is it significant in any way?

A. It is significant to me in this regard that the knee has not been used to its maximum capacity. The quadriceps mechanism, which we are measuring here, [180] and where the wasting occurs, can go through normal activity in normal life, exercising perhaps 30 per cent of its full load.

Now, unless Mrs. Dooley were to be quite active, and do vigorous exercise, it would take a long time before the volume will creep back to its normal measurement.

Q. What, Doctor, do you attribute the disuse to?

A. Well, I think that it is probably the type of life that she and we all lead.

I think that if I, myself, were to break my kneecap, I would have immediate atrophy of the quadriceps mechanism, and unless I resumed a more active life than before, it would take quite a while to build that back to normal, unless I were to do intensive, continuous, special exercises to do it, because the normal power of the quadriceps is so great that 30 per cent of its activity is enough to maintain average function.

Q. Would disuse, Doctor, have any relation to the injury?

(Testimony of Dr. William R. Duncan.)

A. It definitely does. It follows the injury. It follows any injury or immobilization of a joint. If a joint is immobilized, a knee joint, [181] for as little as three weeks, without injury, you will get within three weeks almost an inch of atrophy. It is very slow to come back.

Q. Is that a considerable atrophy that you found, one inch in circumference?

A. One inch is, I would say, an average atrophy following an injury such as this. I don't think it is a considerable atrophy.

Q. Well, it is not possibly considerable atrophy for an injury of this type, but it is considerable atrophy, is it not?

A. I would say it was average for an injury of this type.

Q. Is it average for injuries of some other type?

A. Yes, following a knee cartilage, a simple removal of a knee cartilage we will usually have an atrophy this great or greater.

Q. Doctor, did you find any limping tendency?

A. I believe I did, sir. I will have to check here (looks at document in his hand). I have no record of any limping.

Q. Now, did you note any scar on the skin surface? A. Yes, sir; I did. [182]

Q. And what kind of a scar was that?

A. There was a surgical scar on the inner aspect—that is, on the inside of the left knee—which extended from just above the superior pole, the

(Testimony of Dr. William R. Duncan.)

upper end of the patella, downward for a distance of four inches. The scar was well healed, not reddened, but is spread during its entire course, particularly in the mid portion——

Q. How wide is the spread?

A. I did not measure, but I estimate it is about three-eighths of an inch spread around there.

Q. Is it a severe looking scar, would you say?

A. That is not a very good question to ask a surgeon. It is not a severe looking scar, no, sir.

The Court: Did you say the length?

The Witness: It is four inches, your Honor.

Q. (By Mr. Guimont): Was that measured with the knee flexed, or with the knee straight?

A. With the knee straight.

Q. And on flexion of the knee, is that stretched?

A. I suppose you could stretch it a half inch or so.

Q. Now, you made but the one examination?

A. Yes, sir, I did.

Q. And how long was your examination, Doctor?

A. Approximately a half hour, I would guess.

Q. Ordinarily, would you feel that the attending Doctor is possibly more cognizant of the patient's difficulty than one who examines for just one occasion?

A. I think that the attending physician should have a better over-all knowledge of the patient. On the other hand, as far as evaluation of function and disability, I think sometimes an impartial ex-

(Testimony of Dr. William R. Duncan.)

aminer who is not close to the picture can elicit clearer information than one who is so close to it that it is sometimes distorted.

Q. The attending physician might be more inclined to feel the results of his work better than they actually turned out to be, isn't that true?

A. Well, I think it varies with the situation, with the case.

Q. Now, this type of injury ordinarily lends itself to considerable difficulty in later life, does it not? A. No, sir; it does not.

Q. In your opinion, there isn't any danger, then, I take it, from any after effects? [184]

A. I would not say that there is no danger, but I would say that it is not a probability, that these fractures are commonplace, and to get a result of this excellence reduces the possibility to a very low level.

Q. But they do have——

A. They do have trouble with fractured knee-caps, particularly the extensive comminuted ones which are not accurately replaced, as was done in this case.

Q. Doctor, did you have any history of the patient having been pregnant at the time of her fall?

A. Yes, sir; I did.

Q. Does that add anything to the situation as you view it?

A. The history that I attained was that at the time of the injury, she was six months pregnant, and that there were signs of impending abortion

(Testimony of Dr. William R. Duncan.)

as evidenced by recurrent pain and bleeding, and she finally did give birth to a normal, full-term child, and the child has been in good health.

Q. Do you recall whether she said six weeks pregnant, or six months?

A. Well, I have six months here. I could be wrong. I am sorry. I misread it. It was six weeks [185] pregnancy, and that throughout the next six months of pregnancy, she had the bleeding.

The Court: You say the symptoms of apprehension as to the safety of the unborn child condition continued for six months after the injury?

The Witness: Yes, sir. That is the statement. At the time of the injury, she was six weeks pregnant, and she states that throughout the next six months of pregnancy, there were signs of impending abortion, as evidenced by recurrent pain and bleeding.

The Court: That is sufficient. You may proceed.

Q. (By Mr. Guimont): Did she complain, Doctor, of pain sitting in one position for any length of time, that she then had pain in the knee?

A. She did not complain of pain. She states that the pain in the knee is not very remarkable, and that it is only an ache which is present when she has been sitting in one position for a long period of time.

Q. Did you note anything during your examination in the way of nervousness on her part?

A. Well, not in my examination, except that she volunteered that she had been extremely ner-

(Testimony of Dr. William R. Duncan.)

vous [186] since the accident, and felt that she was gradually getting herself under control.

Q. Doctor, was she cooperative in your examination of her?

A. Yes, sir; she was very cooperative.

Mr. Guimont: I believe that will be all.

Mr. Bateman: No further questions.

The Court: You may be excused.

(Witness excused.)

The Court: Call the next witness.

Mr. Bateman: May it please the Court, I have had the Clerk identify a number of exhibits, and I would like at this time to offer those in evidence.

The Court: Just a minute. Do you wish to say anything about whether the Doctor is to remain in attendance or not so remain?

Does the one who called the Doctor have any concern about that?

Mr. Bateman: No, your Honor. We would like to have the Doctor excused.

Mr. Guimont: I have no objection.

The Court: The Doctor is excused from further attendance and may go on about his business.

The Clerk: Your Honor, Defendants' Exhibits from A-1 to A-15, inclusive, have been marked.

(Drawing marked Defendants' Exhibit A-1 for identification.)

(Drawing marked Defendant's Exhibit A-2 for identification.)

(Photograph marked Defendants' Exhibit A-3 for identification.)

(Photograph marked Defendants' Exhibit A-4 for identification.)

(Photograph marked Defendants' Exhibit A-5 for identification.)

(Photograph marked Defendants' Exhibit A-6 for identification.)

(Photograph marked Defendants' Exhibit A-7 for identification.)

(Photograph marked Defendants' Exhibit A-8 for identification.)

(Photograph marked Defendants' Exhibit A-9 for identification.)

(Photograph marked Defendants' Exhibit A-10 for identification.)

("Fold-A-Pak" pictures marked Defendants' Exhibit A-11 for identification.)

("Fold-A-Pak" pictures marked Defendants' Exhibit A-12 for identification. [188])

(Lake Burien Heights Report marked Defendants' Exhibit A-13 for identification.)

(Employee Time Record marked Defendants' Exhibit A-14 for identification.)

(Weather Bureau Report marked Defendants' Exhibit A-15 for identification.)

Mr. Bateman: May it please the Court, we have identified Defendants' Exhibits A-1 through A-15, and have reached a stipulation with Counsel as to their identity, and their admissibility, and I would like to offer those at this time.

The Court: What is the attitude of both sides in pursuance of that stipulation?

Mr. Bateman: That they might be admitted at

this time, your Honor, and I might identify the exhibits as I offer them, and they will be admitted without objection.

Mr. Guimont: No objection.

The Court: You may proceed.

Mr. Bateman: Defendants' Exhibit A-1, may it please the Court, is a drawing of a portion of the area shown on Exhibit 5 heretofore admitted, being an enlarged scale drawing of the general area of the [189] Lake Burien Apartments Projects in which this accident is alleged to have occurred, and to which testimony has already been given.

This Exhibit A-1 is drawing to a scale of one inch equals 10 feet, and shows the apartment building in which the plaintiff had her apartment, the walk which has been testified to, and which is indicated on Exhibit 5, as well as other things, as shown on the drawing.

The Court: Admitted.

(Defendants' Exhibit A-1 received in evidence.)

Mr. Bateman: Defendants' Exhibit A-2 is a further enlargement of a portion of Exhibit 5, drawn to a scale of one inch equals two feet, and shows just the very corner of the building, and an enlarged scale picture of the sidewalk and lawn area, particularly involved in this case.

We are offering that in evidence.

Defendants' Exhibits A-3, A-4, A-5, A-6, A-7, A-8, A-9 and A-10 for identification are pictures of the area involved in this case.

We are offering those in evidence.

The Court: Each of those is now admitted in evidence. [190]

(Defendants' Exhibits A-2 through A-10 received in evidence.)

Mr. Bateman: Defendants' Exhibits A-11 and A-12 are each a series of pictures of the Lake Burien Apartment House Project site. They are offered to show the landscaping operations, activities and conditions, and the condition of the grounds, and they are offered in evidence as such, and for that purpose only.

The Court: Each of them is admitted.

(Defendants' Exhibits A-11 and A-12 received in evidence.)

Mr. Bateman: Defendants' Exhibit A-13 is a record kept in the usual course of the business of the management of Carroll, Hedlund of the Lake Burien Apartment Project, showing the Report of Hours Worked by Maintenance Personnel of the Lake Burien Heights Apartment House Staff.

The Court: What number is that?

Mr. Bateman: It is A-13.

It is for the months of October, November and December of 1952, showing by name the respective numbers of hours worked by the several employees who are listed on that exhibit, and who are maintenance and grounds personnel there. We are offering it in evidence, your Honor. [191]

The Court: Defendant's Exhibit A-13 is received.

(Defendants' Exhibit A-13 received in evidence.)

DEFENDANTS' EXHIBIT A-13

LAKE BURIEN HEIGHTS

REPORT OF HOURS WORKED—OCTOBER, NOVEMBER,
DECEMBER

	October	November	December	Total
Clarence Suder	200	180	200	580
George Larsson	188	180	200	568
George Enyeart	200	184	200	584
Walter Carlson	200	184	196	580
Frank Orman	200	180	200	580
William Betts	200	180	200	580
Nickolas Cvetikovs	200	180	200	580
Charles Bullock	196	188	192	576
Rachel Dalton	200	180	200	580
Robert McGuire	200	156	....	356
Chester McConville	200	188	192	580
Fred Walter	200	180	200	580
Boyd Goodall	200	180	200	580
Clarence Klees	184	92	....	276
Frank Petschow	200	180	200	580
Clayton Dykeman	200	92	....	292
Delos Bell	200	44	....	244
Arthur Carlson	68	....	....	68
Thomas Charles	92	....	....	92
Nels Berg	88	....	....	88
George Yamada	200	180	200	580
Harold Chase	200	180	200	580
Alvis Cook	200	180	200	580
Jacob Munsch	200	180	200	580
Ray Saunders	152	180	200	532
John Steele	200	180	180	560
	<hr/> 4768	<hr/> 3828	<hr/> 3760	<hr/> 12,356

Mr. Bateman: Defendants' Exhibit for identification A-14 is the Employees' Time Record of Clayton Dykeman for the period of October 25, 1952, through November 7, 1952, showing the number of

hours on each of those days worked by Mr. Dykeman. We are offering that in evidence.

The Court: It is admitted.

(Defendants' Exhibit A-14 received in evidence.)

DEFENDANTS' EXHIBIT A-14

EMPLOYEE'S TIME RECORD

Name: Clayton Dykeman. Classification: Janitor. Property:

Period ending: 11/7/52. Starting: Approved: Suder.

Date	Regular	Sick Leave	Date	Regular	Sick Leave
	Time	Vacation		Time	Vacation
10/25	4	.....	11/1	4	.....
10/26	0	.....	11/2	0	.....
10/27	8	.....	11/3	8	.....
10/28	8	.....	11/4	8	.....
10/29	8	.....	11/5	8	.....
10/30	8	.....	11/6	8	.....
10/31	8	.....	11/7	8	.....

Total Regular Time: 11 days. Rate:.....Per:.....Amount \$.....

Sick Leave and Vacation Time:.....Rate:.....Per:.....Amount \$.....

*

Total Salary: \$.....

Sick Leave earned:.....Days Sick leave used:.....Days

Vacation earned:Weeks Vacation used:Weeks

Mr. Bateman: Defendants' Exhibit for identification A-15 is the certificate of the United States Weather Bureau, showing the time of sunset on November 5, 1952 to have been 4:40 p.m., Pacific Standard Time. At 4:30 p.m., the sky was overcast and visibility was seven miles.

We are offering that certificate in evidence, your Honor.

The Court: Admitted.

(Defendants' Exhibit A-15 received in evidence.)

DEFENDANTS' EXHIBIT A-15

United States Department of Commerce
Weather Bureau

Station: Seattle, Washington Date: March 5, 1954

As the custodian of the records of the U. S. Weather Bureau filed at 703 Federal Office Building, Seattle 4, Washington (1st and Marion), I hereby certify that it appears from such records that at the Weather Bureau Office, 703 Federal Office Building, 1st and Marion, Seattle, Washington, the following data was recorded on November 5, 1952:

Time of sunset was 4:46 p.m., Pacific Standard Time.

At 4:30 p.m. the sky was overcast and the visibility was 7 miles.

/s/ EARL L. PHILLIPS,
Climatologist

Mr. Bateman: There is one further matter.

The Bailiff has present in Court a calendar for the year 1952, and we would like to ask counsel for plaintiffs to stipulate that November 5 of that year fell on Wednesday of the week.

Mr. Guimont: I will so stipulate.

The Court: Let the record show that.

Mr. Bateman: Defendants will call as their next witness, Mr. George Cooley.

GEORGE R. COOLEY

upon being called as a witness for and on behalf of the Defendants, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Bateman): Mr. Cooley, will you state your name, please?

A. George R. Cooley.

Q. What is your residence address?

A. 1410 Lakeside Avenue, South.

Q. What is your occupation?

A. Electrical engineer.

Q. Do you maintain an office in Seattle?

A. At my home at the present time, yes.

Q. Are you licensed by the State of Washington? [193]

A. I am.

Q. As what?

A. Electrical engineer.

Q. How long have you held that license?

A. Since licenses were first issued. I think it was about 20 years ago.

Q. And what training have you had in that field, Mr. Cooley?

A. University of Minnesota. I wasn't a graduate. I attended two years and three quarters, and I have taken a course in correspondence school electrical engineering, which I completed, and I have attended lectures and classes at the University of Washington.

Q. And have you followed that profession since

(Testimony of George R. Cooley.)

you have become licensed as an electrical engineer?

A. Yes, sir.

Q. Mr. Cooley, what, if anything, did you have to do with the design of the Lake Burien Heights Project?

A. I laid it out, electrical work.

Q. Electrical work?

A. Yes, sir.

Q. By whom were you employed to do that?

A. Miller & Ahlson, the architects who were [194] employed by the Government.

Q. When did you do that work?

A. '42, I think, '42 or '43.

Q. In a general way, of what did that consist?

A. It consisted of all of the electrical distribution and the wiring of the houses, and all of the lighting on the project.

Q. Does that include exterior lighting as well as interior lighting?

A. Yes.

Q. You prepared drawings, did you, for that work?

A. I did.

Q. And to whom were they delivered or submitted?

A. Miller & Ahlson, the architects.

Q. Do you know whether or not those drawings were used in the construction and installation of the electrical system and lighting on the project?

A. There were some amendments to them, but not materially.

Q. And the project was constructed in accordance with your drawings, except for the amendments? [195]

(Testimony of George R. Cooley.)

A. Yes, and the amendments were interior wiring, and not outside.

Q. Mr. Cooley, have you had occasion to make an examination or measurement of artificial light in the absence of any natural light at the Lake Burien Project recently? A. Yes.

Q. When was that?

A. The 26th of February.

Q. Showing you, Mr. Cooley, Exhibit 5, that is a drawing of the Lake Burien Apartments Project site, showing you, also, Defendants' Exhibit A-1, that is a drawing on a much larger scale of a portion of the Lake Burien Heights Apartment House Project, can you orient yourself to those two exhibits and locate where on Exhibit 5 the enlargement has been taken, or from what portion of Exhibit 5 the enlargement has been taken?

A. Yes, sir.

Q. You testified that you made an examination or measurement of light there on February 27. What time of day?

A. It was about 7:10. It was the same time after sunset as you advised me that the accident happened.

Q. And what was the condition of light at that [196] time, of natural light?

A. There was none.

The Court: This was February 27, 1954 that you made this last observation?

The Witness: February 26.

The Court: Pardon. This year?

(Testimony of George R. Cooley.)

The Witness: This year.

Q. (By Mr. Bateman): By your statement that there was no natural light, what do you mean?

A. It was a dark night, no sky light.

Q. No light from the sun or after glow?

A. No.

Q. A condition during which it would get no darker that night? A. Yes.

Q. Can you indicate on Exhibit 5 the area of the Lake Burien Project site where you made that examination? A. Yes.

Q. Will you do so by placing your initials in that general area on Exhibit 5?

(Witness writes on Plaintiffs' Exhibit 5.)

Q. Will you state what letters you put in there?

A. I put my initials, "G.R.C."

Q. Now, will you please, on Defendants' Exhibit A-1 make the same indication by your initials from the place where you made your examination of the amount lights?

A. This doesn't appear familiar to me. I found it, yes, sir.

(Witness marks on Defendants' Exhibit A-1.)

The Court: In connection with the last question or two, the Court would be more certain of the scope of the witness' answers, if it were determined by proper questions whether his last answer was made with respect to both the artificial and the natural lighting condition at the time and place.

(Testimony of George R. Cooley.)

Mr. Bateman: Thank you, your Honor. We will clear that up.

Q. What light were you measuring on February 27? A. The artificial light.

The Court: Mr. Bateman, he corrected the Court's understanding about that date to the 26th, as I understood it.

Mr. Bateman: Oh, I am sorry.

Q. Was that the 26th?

A. The date I have in my memorandum is the [198] 26th.

Q. The 26th of February?

A. (Reading from document): 26th of February met Mr. Bateman and took the trip to the project. Made measurements at 7:15.

Q. Mr. Cooley, there was no natural light present at that time? A. No, none at all.

Q. And your measurements were strictly of the artificial light? A. Yes.

Q. What sorts of elimination were there in that area at that time?

A. Well, there was two street lights visible, and a light from a floodlight that was flooding a shopping center, and there was another light, floodlight, on the side of the building nearby.

Q. Will you, on Exhibit A-1, indicate those source of illumination by writing the letter "I" in the approximate vicinity or direction from which they came?

Would you write "I-1" and designate what that is, and "I-2" and "I-3" respectively?

(Testimony of George R. Cooley.)

(Witness writes on Defendants' Exhibit A-1).

A. I cannot put the location of the private [199] floodlights that were used at the shopping center. I don't know exactly where they were.

Q. Can you tell the general direction from which they came?

A. They were some place in the vicinity of the shopping center. I couldn't specify as to just where they were, because I didn't make a memorandum.

Q. With that qualification, will you indicate the general direction from which it came, by the word "I" and write the word "General" after that?

A. Yes.

(Writing on Defendants' Exhibit A-1.)

Q. Mr. Cooley, by what method did you examine the amount of illumination in that area?

A. By a foot candle meter.

Q. What is that?

A. An instrument for measuring light.

Q. And where did you take those measurements precisely?

A. At the site of the accident.

Q. Well, will you indicate on Exhibit A-1 the place or places where you made measurements, if that is shown on A-1?

A. Well, I can indicate where I made measurements, by making a little cross. [200]

Q. That would be fine.

A. But I made many measurements all around the area.

Q. And you have indicated by a cross there is

(Testimony of George R. Cooley.)

places in that area where you made those measurements? A. Yes.

Q. Mr. Cooley, at what level was the light measured? A. On the sidewalk.

Q. What were your findings?

A. The general area where the accident occurred was two one-hundredths of a foot candle.

Q. On the sidewalk surface?

A. On the sidewalk surface.

The Court: Is there another way of conveying that idea, to put after the word "candle" the word "power" — two one-hundredths of a foot candle power of light?

The Witness: Yes, sir.

The Court: Now, Mr. Bateman, you may proceed.

Q. (By Mr. Bateman): Mr. Cooley, was there some variation in the amount of light? [201]

A. Not in the immediate vicinity of where the accident was.

Q. Can you indicate on the drawing opposite the crosses that you have marked where measurements were made, the amount of the light at those respective places?

(Witness writes on Defendants' Exhibit A-1.)

Q. The figures that you have placed indicate two hundredths. That designates two one-hundredths of a foot?

A. Two one-hundredths of a foot candle power.

Q. Mr. Cooley, the measurements you have made,

(Testimony of George R. Cooley.)

what sort of a surface is that—a horizontal surface, or a vertical surface?

A. A horizontal surface.

Q. Did you measure, or did you not, the amount of light passed by a vertical surface at those places?

A. Yes.

Q. What was your finding in that respect?

A. Six one-hundredths of a foot candle.

Q. That would be the amount of light cast upon a vertical surface?

A. On a vertical stake which we placed in the ground. [202]

Q. Along opposite the various places?

A. Along opposite the place where the accident happened.

Q. And in several places along there?

A. And in several places in that vicinity, yes.

Q. From your examination and measurement of the light, did you form any opinion as to the adequacy of the light in that area.

A. It was normal street lighting.

Excuse me. I will change that. Normal sidewalk lighting.

Q. Mr. Cooley, did you make any measurements of the amount of light in any other places?

A. I made a number of measurements in different places in Seattle.

Q. What findings did you make in that respect, and will you designate in each instance where the measurement was made?

(Testimony of George R. Cooley.)

Mr. Guimont: I am going to object to this, your Honor. I think it is immaterial.

The Court: Try to further qualify the witness.

Q. (By Mr. Bateman): What was the purpose of making these [203] additional measurements of the lights?

A. To compare it with the light at the point of this accident.

The Court: Do you still object?

Mr. Guimont: I do object.

The Court: Well, I think the Court should sustain the objection for the same reason you wouldn't admit photographs over objection of places other than the specific place in question under conditions similar to those at the time of the accident.

Mr. Bateman: May it please the Court, we can further qualify the matter, your Honor, by showing the times when these measurements were made, and the manner in which these measurements were taken, if that is the reason for the Court's sustaining the objection.

I might add, and will perhaps save the Court's time that our purpose of course is to show by comparison the amounts of light available at different places within the City of Seattle, for the purpose of showing that the lighting at the place of the accident was adequate, was normal, was comparable and greater than that in numerous other places.

The Court: The Court sustains the objection on the same basis as objections to anything [204] ex-

(Testimony of George R. Cooley.)

cept actually what occurred in the facts material to the litigation in any case.

A photograph is manufactured evidence, unless possibly in some theoretical situation of a photograph of a so-called photo finish situation, where some action or something was taking place at a given moment, and there happened to be a photograph made of it which caught the action and reproduced it at a certain moment material, but ordinarily a photograph is a manufactured bit of physical evidence, and it is never admissible as a right in any case.

Sometimes in case like this where you have a photograph which is proved by authenticating evidence to be a reasonable and accurate reproduction of the physical facts, and the conditions existing, actually existing, at the moment material to the litigation, then judicial practice has approved, under limited circumstances, the receiving in evidence of such photographs, but it is very limited.

The objection is sustained.

Mr. Bateman: Exception, if the Court please.

The Court: The exception is allowed.

Mr. Bateman: And we would like to make the following offer of proof: That by this testimony, we offer to prove that the lighting in the area where this [205] accident occurred was greater and exceeded that in common public sidewalks and streets throughout various places in the City of Seattle, measurements having been taken under the same

(Testimony of George R. Cooley.)

conditions as existed at the time of the accident in question.

The Court: Is there any objection to the offer?

Mr. Guimont: I object to the offer.

The Court: The objection is sustained.

Q. (By Mr. Bateman): Mr. Cooley, are you acquainted with general standards of street lighting?

A. Yes, sir.

Q. Did you determine from the measurements taken of the amount of light at the places indicated on your drawing where you made these measurements, how that compared with general standards of sidewalk lighting?

A. It was normal sidewalk lighting.

Q. Did you make on February 26th, at the time you have testified to, any tests of visual activity possible at the scene where you made these measurements?

A. Yes.

Q. What, if any, such test did you make?

A. The notes that I have in my memorandum book [207] were made with the light that existed there. I was able to read a newspaper, and I was able to easily see a piece of wire which you laid on the sidewalk.

Q. Where was the newspaper placed?

A. I held it in my hands.

Q. And at what level, were you?

A. Down close to the sidewalk, within a few inches of the sidewalk.

Mr. Bateman: You may inquire.

(Testimony of George R. Cooley.)

Cross Examination

Q. (By Mr. Guimont): How, Mr. Cooley, did you determine in that area that there was no natural light?

A. Personal observation, looking at the sky.

Q. Were the lights turned off to make that?

A. No. The artificial light was on, but there was no sky light.

Q. And the lights, though, that were on were on in the Project?

A. I didn't understand that question.

Q. There were lights on all during the time that you were there? A. Yes.

Q. In the Project? A. Yes. [208]

Q. Was there any light emanating from the apartment windows? A. No.

Q. If there had been, would that affect the computation of candle power?

A. It would have made it higher.

Q. It would have made it higher. You know what wattage there was in any of the lights that were on?

A. No, I do not.

Q. Do you know what wattage was contained in the lights, if they were on, on November 5, 1952?

A. The original installation was 2,500 lumen lamps. That is about 250 candle power.

That depreciates or goes down with age.

Q. And how fast does that go down?

A. In 6,000 hours it will go down to about 40 per cent. In 6,000 hours of burning, it will go down to about 40 per cent of its initial light.

(Testimony of George R. Cooley.)

Q. Would the candle power of light on a given area vary in accordance with the voltage or wattage of the globes that were used in the light fixtures?

A. It would vary with the wattage, yes.

Q. Would you have any knowledge at all of what that wattage may have been on November 5, 1952? [209]

A. I only know what I laid out on the plans, and it was afterwards accepted as being according to the plans, and those are 2,500 lumen street lights.

Q. Was that the street lights, the 2,500——?

A. 2,500 lumen, yes. That is about 250 candle power.

Q. That was placed in the street lights?

A. Those are in the street lights, yes.

Q. Do you know what was the voltage or wattage of any of the globes prescribed which may have been placed on buildings, on the outside of buildings? A. I don't know.

Q. You don't know what that wattage was?

A. I don't know what that wattage was.

Q. I note on Exhibit A-1 that you placed two lights apparently in the vicinity of the shopping center? A. Yes, sir.

Q. Would those lights cast a shadow on the sidewalk where the pole is placed in the parking strip area?

A. The only lights under consideration were those that were visible from that point.

Q. Did you take any measurement of the light,

(Testimony of George R. Cooley.)

candlepower, on the walk in the shadow cast by the [210] telephone pole?

A. No. We avoided that entirely, didn't take any measurements there.

Q. Do you recall at this time whether there was any shadow there?

A. There was slight shadow there from the floodlights on the building, but that didn't shine on the sidewalk.

Q. Now, the floodlights from the building didn't shine on the sidewalk?

A. No. The floodlight did shine on the sidewalk. The shadow of the pole did not.

Q. The shadow of the pole did not?

A. No.

Q. Now, was there any shadow cast by a fence that was placed on an area west of the telephone pole?

A. Yes, but I didn't take measurements in that shadow.

Q. Did a sand box that was, also, west of the telephone pole and across the walk, did that sand box that stood some three or four feet high cast any shadow? A. No.

Q. Did you take any measurements of candlepower in that shadow? A. No. [211]

Q. Well, did it cast a shadow?

A. I don't think it did.

Q. Now, I thought, Mr. Cooley, that there were three crosses that you failed to place in the candlepower figure opposite on A-1.

(Testimony of George R. Cooley.)

Would you please indicate what your opinion is, if you have one, of the candlepower of those three crosses? They are west of the telephone pole.

The Court: When you answer this question, may we be interrupted for a moment?

A. I have marked seven places where I took measurements, and I have seven measurements. And I don't see any other cross. There is one cross up there which I didn't make any measurement from because it was in the shadow of the fence or was obstructed in such a way that it didn't give a true indication.

The Court: At this moment we will take a ten-minute recess.

(Recess.)

The Court: You may resume the interrogation of the witness.

Mr. Guimont: Thank you, your Honor.

Q. (By Mr. Guimont): Mr. Cooley, west of the telephone pole on Exhibit No. A-1, you made three other little checks, did [212] you not?

A. Yes.

Q. Over the sidewalk area? A. Yes.

Q. Did you take any measurements of the candlepower there?

A. I took measurements but I didn't make a memo on it, because I thought they were immaterial, not being close to where I was told the accident happened.

Q. Now, did you notice any shadow east of that telephone pole across the walk?

(Testimony of George R. Cooley.)

A. There was further back than where the accident happened.

Q. Would you mark on Exhibit A-1 with a blue pencil and a straight line crossing the sidewalk, if that is where it should be, where the termination of that shadow was?

A. (Drawing) That is as near as I remember. I didn't take any measurement at the time, but I think that where I made the mark is approximately right.

Q. Would the candlepower on the walk be diminished by a shadow of a person walking on the walk, if any?

A. Yes. Their shadow would very likely fall [213] on the walk, but the light comes from so many directions that if there was any shadow that the place would be very slight.

Q. How far did the light travel from the shopping center bulbs?

The Witness: What is the scale?

Mr. Bateman: The scale is on the drawing, Mr. Cooley.

The Court: Which drawing are you looking at, Mr. Cooley?

A. I see the scale here says one inch to ten feet. I would say about 150 feet.

Q. (By Mr. Guimont): Now, you don't know, of course, whether the lights were even on on November 5, 1952, do you, Mr. Cooley?

A. No, I do not.

(Testimony of George R. Cooley.)

Q. That candlepower would be varied by the strength of the globe? A. By what?

Q. The candlepower you found on the evening of February 26th, 1954, would be varied by the strength of the candlepower of the globe, is that right? A. That is right.

Mr. Guimont: That is all. [214]

Redirect Examination

Q. (By Mr. Bateman): Mr. Cooley, do you have any recollection of the measurements of light that were made in the places checked there west of the telephone pole?

A. Yes, I have. I remember them. I didn't write them down at the time.

Q. What were they?

A. From two and one-half to three one-hundredths of a foot candle.

Q. How does that compare with the measurements at the other places that you made?

A. The other place was two one-hundredths of a foot candle.

Q. Then the amount of light was greater in the area west of the telephone pole?

A. Yes.

Q. Would you indicate on the drawing those measurements?

(Witness draws on Defendants' Exhibit A-1.)

Q. Will you also indicate on Exhibit A-1 the candlepower from the measurement of light on a vertical surface that you made there by placing the

(Testimony of George R. Cooley.)

amount of the candlepower according to your measurement with a small "V" after it to indicate "vertical"? [215]

(Witness draws on Defendants' Exhibit A-1.)

Q. You have indicated, Mr. Cooley, a rather large "V" at point zero six?

A. That is six one-hundredths of a foot candle.

Q. Do you intend to indicate that was the measurement over that entire area?

A. No. That is just on a post that was stuck in the ground there.

Q. Did you make more than one measurement of that vertical candle?

A. Yes, we took it from several different directions.

Q. And from several different places, or just the one place?

A. Just the one place around the stick.

Q. Mr. Cooley, was the measurement of light on the vertical surface of the post taken from just one direction, or was it taken from several directions?

A. We took it from several directions.

Q. Do you recall how many different directions?

A. I think we took it from three directions, facing each one of those sources of light.

Q. You have marked a blue line across the sidewalk area close to the place where you put your initials. What was that blue line to indicate?

A. That was the shadow of the fence east of it.

Q. And what, if anything, do you know about the intensity of that shadow?

(Testimony of George R. Cooley.)

A. Well, we couldn't get a reading on the meter.

Q. Were there any other shadows in that vicinity on the sidewalk area?

A. No. There were too many sources of light.

Q. Pardon me?

A. There were too many different sources of light to produce any distinct shadow.

Q. What effect, if any, do the many sources of light have on the shadow?

A. There wouldn't be any, or very little.

Mr. Bateman: No further questions.

Recross Examination

Q. (By Mr. Guimont:) Did you find any variation of intensity in the vertical readings as reflected from the different sources of light that you were testing?

A. When you take a vertical, you could only take from one source. The electric eye only takes light from one source, one direction. [217]

Q. That is right. That is what I am talking about.

When you took the reading from the two lights that are in the shopping area, was there any variation in intensity of that over the light from one of the other sources?

A. No. It was all the same, as near as I could read on the meter.

Q. Now, would you refer again to A-1 and indicate on the sidewalk, by shading the area, the area

(Testimony of George R. Cooley.)

that was shaded by the telephone pole that you testified to?

A. It would only just be at the base, close to the base of the pole, because the lights from the other sources would obliterate a shadow.

Q. Now, would you put whatever shadow on you feel was there that you recall?

A. Well, no, I can't. I don't think there would be any shadow on that, that I could tell from here would be there.

Q. You didn't measure anything in that shadow?

A. No. I didn't measure anything in the shadow.

Mr. Guimont: That is all.

Mr. Bateman: No further questions. [218]

The Court: You may step down, Mr. Cooley.

(Witness excused)

The Court: Call the next witness.

Mr. Bateman: May this witness be excused, Your Honor.

The Court: Any objection?

Mr. Guimont: No objection.

The Court: You may be excused, Mr. Cooley, and go on about your own business, if that is your wish.

Mr. Bateman: Thank you. I would like to call Mr. Cvetikovs.

NICKOLAS CVETIKOV

upon being called as a witness for and on behalf of the Defendants, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Bateman): Will you please state your name, and I am going to ask you to spell it?

A. Nickolas Cvetikovs. Nickolas, N-i-c-k-o-l-a-s, Cvetikovs, C-v-e-t-i-k-o-v-s (spelling).

Q. Where is your residence, Mr. Cvetikovs?

A. 1110-139th Southwest.

Q. And is that in the Lake Burien Apartments Project? [219]

A. That is in the Lake Burien Apartment House.

Q. How long have you lived there?

A. Since December, 1950.

Q. What is your occupation?

A. Well, I am night watchman and utility maintenance man.

Q. Where?

A. In Lake Burien Heights Apartments.

Q. By whom are you employed?

A. By Lake Burien Heights Apartments.

The Court: By the United States of America through that concern?

The Witness: That is right.

The Court: Proceed.

Q. How long have you been so employed?

A. For about three years, more than three years.

(Testimony of Nicolas Cvetikovs.)

The Court: How long have you lived in this country?

The Witness: Just the same.

Q. Who is your immediate superior?

A. Mr. Brydon, Mr. James Brydon.

Q. You were employed there then on November 5, and during the months of October and November of 1952? [220]

A. Yes, I was.

Q. In the same capacity?

A. Just right.

Q. What are your duties, Mr. Cvetikovs?

A. Well, my duties are to take emergency calls and go to the apartments and take care of emergencies which occur during the night when nobody is on there from the staff, and of course, I make my rounds, and take care of everything what seems to be wrong.

Q. What are your hours of work?

A. I work from six o'clock every night.

Q. And that was the situation during the month of November, 1952?

A. Yes, it was the situation then.

Q. Do you have anything to do with the outside lighting on the project?

A. Yes, I do. I reset the clocks.

Q. What do you mean by that?

A. Well, the outside lighting has to go on and off at certain times, and my duty is to set the clocks so that the lights come on when desired.

Q. Well, now, what clocks are these?

(Testimony of Nicolas Cvetikovs.)

A. These are the switch clocks which switch on the lights, the outside lights and the porch lights.

Q. By the "outside lights", what lights do you [221] refer to?

A. We call them area lights. They are big lamps suspended or fastened to the building, not to all the buildings, but to some of them.

Q. Showing you Defendants' Exhibits A-4 and A-10, I will ask you to designate whether or not there are any of those area lights shown in those pictures.

A. Yes. This is what we mean by area lights.

Q. Is that what you mean by area lights?

A. Yes.

Q. Will you refer to Exhibit—the one that shows the close-up picture of one of those lights?

What number is that?

A. That is A-4.

Q. And from the position that that light is shown to be situated, I will ask you, is that the place where all of these lights are attached to the respective buildings?

A. Well, it is approximately the place.

Q. Where is that? Approximately how high above the ground is that? Do you know?

A. Well, I just wouldn't imagine—maybe twenty feet, or something.

Q. Referring you to the other picture you have [222] there. I believe it is A-10. Are you familiar with the area shown in that picture?

A. Yes, I am.

(Testimony of Nicolas Cvetikovs.)

Mr. Bateman: Would you please show the witness Exhibit A-1?

(Defendants' Exhibit A-1 handed to the witness.)

Q. Can you, by referring to Exhibit A-1, indicate where on Exhibit A-1 the light shown in Exhibit A-1 is located?

A. Yes, I can.

Q. Would you indicate that light with a red pencil and a circle and write "L" in it, or something? A. Yes. (Writing)

Q. Now, that light you have indicated is one of the area lights? A. Yes.

Q. And it is part of your duties to set the time clocks that bring those on? A. That is right.

Q. What, if any, other time clocks do you set, time switches?

A. Well, in every building there is such a time switch or time clock, and it operates all the lamps in the building. [223]

Q. Is that including this area light?

A. Including this area light.

Q. Now, how do you set those?

A. Well, the switch is located in the basement, and it is a box, and you just open it up and there are two screws, one screw for time on, and the other screw for time off. By changing the position of these two screws, you regulate the time when the lamps come on and off.

Q. And what is your practice, and what was your practice, in November of 1952, with respect to

(Testimony of Nicolas Cvetikovs.)

the regulating of the time the lights were to come on?

A. Well, general practice was to set the time switches so that the area and all of the lamps come on just after sunset.

Q. And is that the manner in which you performed that duty in November of 1952 and since that time? A. Well, so I believe.

Q. I will ask you whether or not you have ever known since you have been there, these time switches to fail?

A. Not in this particular building.

Q. In other words, when they are set, the [224] lights come on at that time?

A. That is right.

May I correct? Except when the power is off.

Q. Except in event of a power failure?

A. That is right.

Q. Do you have any duties or have you had any duties with respect to the fences which were constructed around the lawn areas when they were planted out there?

A. Well, whenever I was around, if I saw a fence which was not in order, I put the wire aside or fixed it as well as I could. I mean, I would just put it in order to prevent disaster.

Q. Going back again to the question of the lights, did you have anything to do with the street lights in the area as distinguished from these area lights on the buildings? A. No.

(Testimony of Nicolas Cvetikovs.)

Q. Do you know how they were regulated or how they were turned on and off?

A. So far as I know, by the same means, but the City Light took care of it.

Q. Did you or did you not coordinate your lights in any way with the street lights? [225]

A. Well, approximately, yes.

Q. Were they set to come on or were they not before it became dark? A. Yes, they were.

Mr. Bateman: I have no further questions.

Cross Examination

Q. (By Mr. Guimont): Did you say that the switches for the regulation of these area lights are in each building? A. That is right.

Q. And do you recall on the evening of November 5, 1952, going to the building where that light is shown, and turning that switch on or regulating that switch?

A. Well, the switches work automatically. Once set, they go on indefinitely until the power is off or you reset them.

Q. Power going off will stop the mechanism?

A. That is right.

Q. Do you recall when it was on November 5, 1952, that you set that switch?

A. Well, I wouldn't recall the date.

Q. Would it have been a week before?

A. Well, my system, if I can say——

Q. What was your system? [226]

(Testimony of Nicolas Cvetikovs.)

A. To reset them every fortnight, every second week.

Q. Every two weeks? A. That is right.

Q. And you don't recall when you set this switch? A. No, sir. I wouldn't.

The Court: Have you had a lot of experience in your earlier life in operating and setting up this kind of electrical system or systems?

The Witness: I would say "yes".

The Court: Did you do that kind of work in your native country? The Witness: No.

The Court: There was recently in a publicly distributed periodical in this country, an article saying that we Americans are not very kind to foreigners who come here, were not very hospitable to them. I guess you have not found that, have you?

The Witness: I have found it just the opposite.

The Court: You are very lucky getting a job for the United States soon after arrival.

The Witness: Sure.

The Court: Maybe a lot of native born [227] people would like to get some ideas from you as to how to get some ideas from you as to how to get employed by the United States. You might have a good job instructing them how to do that. I think that your example would be a wonderfully strong refutation of that article which appeared in the Literary Digest some months ago to the effect that Americans have not been kind to foreigners. I do not think that is true, and I think your experience is to the contrary.

(Testimony of Nicolas Cvetikovs.)

The Witness: I don't think it is true.

The Court: I think that your experience shows that in America everybody has an equal chance.

The Witness: That is right.

The Court: It makes one wonder if the conditions were reversed, do you suppose the Government in your native land would employ an American to work for the Government the next day after his arrival there?

The Witness: I don't know.

The Court: You may proceed.

The Witness: If he was an American, probably "yes".

Q. (By Mr. Guimont): Do you know if November 5, 1952, you were setting up the switch to come on each evening earlier or [228] later?

A. Well, of course, come on later—earlier, excuse me.

Q. Then, I take it that when you did set the switch at whatever time you did set it, you set it so that on successive days during the fortnight it would be coming on earlier each day?

A. That is right.

Q. Do you know what size bulbs are used in those area lights that you pointed out in A-4 and A-10? A. Yes. Usually 300 watt.

Q. And do you know whether the bulb was on on the evening of November 5, 1952?

A. I wouldn't know.

Q. Now, you came on at six o'clock each evening at that time? A. That is right.

(Testimony of Nicolas Cvetikovs.)

Q. And after you came on, was it your duty to set this switch every fortnight to accommodate the hours of sunset? A. That is right.

Q. Do you recall approximately when sunset was on November 5?

A. Well, I don't know exactly. It was mentioned [229] about 4:30 or something.

Q. You didn't have as part of your duties to repair barricades placed around the lawn areas, did you?

A. Well, whenever I made my rounds, and I found the barricades down, either I put them away on the sidewalk or I just repaired, as far as I could, with my pair of pliers.

Q. Do you recall having on occasions during the fall of 1952 and prior to November 5 of 1952 of setting aside these barricades that had fallen down or were loose? A. Yes, sometimes.

Q. And do you recall where those barricades had fallen or had come apart?

A. Well, I wouldn't recall the exact site.

Q. How was it that you had occasion to observe those barricades being down, or was it in the daylight or was it in the evening?

A. Well, I usually work in the evening, and so I came on duty at six. This time, it was dark.

Q. Now, have you walked into any barricades on the sidewalks that had come down, you, yourself?

A. Well, no.

Q. Did you receive in your duties any [230]

(Testimony of Nicolas Cvetikovs.)

complaints from tenants with reference to barricades being down? A. I wouldn't recall.

Q. Do you know of anybody that was injured by falling over those barricades?

A. Even I didn't know that the plaintiff had been injured.

Q. You didn't even know the plaintiff had been injured? A. No.

The Court: Mr. Guimont, may I interrupt you here? Would it be convenient for the witness to be here at five minutes before two?

The Witness: Yes.

The Court: Can Counsel, also?

Mr. Guimont: Yes.

The Court: Then I ask you to be here at five minutes before two o'clock P. M. The Court will be in recess until that time.

(At 12:00 o'clock noon, Thursday, March 11, 1954, proceedings recessed until 1:55 o'clock p.m. Thursday, March 11, 1954.) [231]

Seattle, Wash., March 11, 1954, 1:55 o'clock p.m.

The Court: You may proceed. The witness will resume the stand for further interrogation.

Q. (By Mr. Guimont): You are acquainted with the type of lights that are placed in the area, the area lights you speak of? A. Yes, I am.

Q. Those area lights, are they called floodlights?

A. No.

Q. Are they a shaded lamp? That is, do they have a lampshade around them?

(Testimony of Nicolas Cvetikovs.)

A. That is right. They have a glass lampshade partially covered by some black stuff, or maybe a hood.

Q. Are there any floodlamps around the area?

A. Well, the only floodlamps you can see from there are at the shopping center.

Q. And about how far away are they?

A. Well, it is difficult to judge. Maybe 800 feet or maybe less than that. A map should [232] indicate the distance.

Q. Are you familiar with the area where the apartment was that Mr. and Mrs. Dooley lived in in November of 1952?

A. Well, I don't know. If you tell me the apartment number and the house number, I will tell you.

Q. It was 13710-12th Southwest, and Apartment 101.

A. Yes, I do.

Q. Are you familiar with the point that has been marked on Exhibit No. A-1 and where there are several little crosses marked on the sidewalk area?

A. Yes, I am familiar.

Q. Is there a light west of that area, that is placed on a building?

A. Yes, that is the light about which we are talking now.

Q. Is that the light? As it falls on the sidewalk area where those marks are, is that obscured by the fence—there is a fence, a picket fence of some 7 or 8 feet, is there not?

A. Yes. There is one.

Q. Does that light have any shadow cast? Does that fence cast any shadow over the walk?

(Testimony of Nicolas Cvetikovs.)

A. I couldn't answer you that. [233]

Q. You don't know?

A. I don't remember. I couldn't tell.

Q. Would you know how high on the building that lamp is?

A. Well, we have the distance, the head of the lamp, and the distance between the point of the lamp and the fence, or we can place a direct line and have the shadow.

Q. It would cast a shadow, do you think, that light?

Mr. Bateman: I think the witness has already answered that. A. Maybe, maybe not.

The Court: The objection is overruled.

Mr. Bateman: Would you repeat the witness' answer?

(Last answer read by the reporter.)

Q. (By Mr. Guimont): Now, calling your attention particularly to that area, did you ever have occasion prior to November 5, 1952, of picking up any wires off the sidewalk?

A. Possibly might have, might be, I don't know.

Q. About how often did you find yourself picking [234] up wires that had fallen across the sidewalk?

A. You mean in the general area?

Q. Yes, in that general area.

A. In this general area?

Q. Yes.

A. I just wouldn't be able to tell you the number. It would be maybe a couple of times; maybe more.

(Testimony of Nicolas Cvetikovs.)

Q. Did you ever receive any direct orders or instructions to make any repairs to the wire barricades in the area?

A. No. I always, whenever I passed and I saw it, I removed it, because it was an obstruction which had to be removed.

Mr. Guimont: I believe that will be all.

Redirect Examination

Q. (My Mr. Bateman): What were your instructions with respect to the setting of the lights to come on?

By the "lights", I mean the area lights and the front lights of the building, to come on in the evening?

A. Well, the general instructions were to set them so that the lights came on just after the sun set.

Q. By "just after"— [235]

A. Well, I mean between sunset and maybe ten or fifteen minutes after.

Q. And what observations, if any, have you made with respect to the time when the street lights in the area came on as compared with your area lights?

A. Well, there would be maybe a few minutes' difference.

Q. By "a few minutes", how many?

A. Well, up to five, or up to ten. It would depend on the time.

Mr. Bateman: No further questions.

(Testimony of Nicolas Cvetikovs.)

The Court: You may step down.

(Witness excused)

The Court: Call the next witness.

Mr. Bateman: I would like to call Mr. George Yamada.

GEORGE YAMADA

upon being called as a witness for and on behalf of the Defendants, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Bateman): Will you state your name, please? A. George Yamada.

The Court: Will you please repeat that [236] and spell it?

The Witness: Yamada,—Y-a-m-a-d-a (spelling).

The Court: You may inquire.

Q. (By Mr. Bateman): Where do you live, Mr. Yamada?

A. Route 4, Box 918, in Kent.

Q. What is your occupation?

A. I am a maintenance gardener at Lake Burien Heights.

Q. How long have you been so employed?

A. With Lake Burien Heights for approximately four years.

Q. You were employed there during November of 1952? A. Yes, I was.

Q. And for some time prior to that?

A. Yes, I was.

(Testimony of George Yamada.)

Q. What are your duties as maintenance gardener?

A. Duties are to line up the work force, their work program for each day, see that those work programs are carried out.

Q. Have you been in gardening work for some time? [237] A. Yes, I have.

Q. For how long? A. Seven years.

Q. Where did you work prior to that?

A. Prior to Lake Burien Heights, I was employed by Seattle Landscape, Incorporated.

Q. For a period of three years?

A. Three years, and prior to that time, I served with the Armed Forces.

Q. Are you acquainted with the lawn re-establishment program that was carried on at the Lake Burien Heights during 1952?

A. Yes, I am.

Q. What connection, if any, did you have with that?

A. I was on loan from the management to the Federal Housing Administration as an assistant to the architectural inspector of that office.

Q. Of what office?

A. Federal Housing Administration.

Q. And as such, what did you do?

A. It was my duty to see that the contractor there carried out his work program, according to specifications.

Q. And who was the contractor? [238]

A. Miller & Hansen.

(Testimony of George Yamada.)

Q. And what type of work are they in?

A. They are landscape gardeners.

Q. And what was the nature of the contract that they were to perform?

A. The nature of that contract was to renovate lawn areas, that is re-seed, and also the installation of new plants.

Q. Shrubbery?

A. Shrubbery, trees, et cetera.

Q. Do you know approximately how much area was involved in their lawn re-seeding program?

A. Approximately 130,000 square feet.

Q. And was that all at the Lake Burien Apartment House site?

A. Yes, it was.

Q. Do you know the cost of that installation or of that work?

A. I believe their contract was based on a figure of some eight cents a square foot.

Q. Have you had occasion to compute what that total figure was?

A. No, I haven't.

Q. What was the practice, if any, with respect to the lawn areas as they were re-seeded by Miller & Hansen? [239]

A. As the lawn areas were re-seeded, they put up a barricade, a fence, to divert people away from the new seedlings.

Q. By the way, when was this work carried out?

A. This program was carried on starting in May of 1952, and carried through the succeeding months of that year.

(Testimony of George Yamada.)

Q. What was the nature of the barricades which were put up?

A. I don't quite understand the question.

Q. Can you describe the fences or barricades that you referred to as having been placed around the newly seeded areas?

A. These fences were approximately two feet high off the ground, with a single wire placed on it, generally stapled.

Q. And what was the nature of the uprights?

A. Uprights were either 2x4's or 2x2's.

Q. And how far apart were they, if there is any general practice on that?

A. That depended on the area. I don't believe that the stakes were no more than about eight foot apart.

Q. And where were they placed? [240]

A. They were placed away from the sidewalk in the new lawn area.

Q. How far? Can you locate more exactly?

A. Well, I would judge that they were in the new area about three to five inches.

Q. Calling your attention to Exhibit A-1, which I believe is on the desk before you, are you able to recognize the portion of the Lake Burien Heights Project or Apartment House Project site that that represents?

A. Yes.

Q. And are you familiar with the scale that is indicated on the drawing?

A. Yes, I am.

(Testimony of George Yamada.)

Mr. Bateman: Mr. Bailiff, will you give those pictures to the witness, please?

(Bailiff hands pictures to the witness.)

Q. The Bailiff has handed you two exhibits. Will you indicate the numbers of those?

A. I have A-11 and A-12.

Q. Those are pictures of the Burien Apartment House Project area showing the grounds. Have you seen those before? A. Yes.

Q. Did you take them? [241]

A. Yes. I took these pictures.

Q. Do you know when they were taken?

A. This was taken approximately the spring of 1953.

Q. That would be a year ago?

A. A year ago.

Q. A year ago this spring? A. Yes.

Q. Is that the approximate appearance of the ground, or was it at that time?

A. Yes, it is.

Q. Do those pictures clearly represent the work that was accomplished by the re-establishment program with respect to these lawns and plantings in the area? A. Yes.

Q. Showing you Plaintiffs' exhibits, would you indicate the numbers of the pictures which you have just been handed?

A. I have A-3, A-9, A-8, A-7, A-5, A-6, A-4, and A-10.

Q. Would you examine those, please, and tell

(Testimony of George Yamada.)

me whether or not you recognize the area of the Lake Burien Project at which they were taken?

A. Yes, I recognize them. [242]

Q. I will ask you whether or not those pictures are taken of any particular area on the Exhibit A-1 before you?

A. Yes. These are identical. They are of that area.

Mr. Bateman: Would you show the witness, please, Mr. Bailiff, Exhibit A-2, which is on the Clerk's desk?

(Defendants' Exhibit A-2 handed to the witness.)

Q. Mr. Yamada, Exhibit A-2 is a further enlarged drawing of the area, the whole of which is shown on A-1? A. Yes.

Q. Can you orient yourself to that exhibit and drawing? A. Yes, I can.

Q. You will note that the scale on this last drawing you have checked is one inch equals two feet?

A. Yes.

Q. Are you acquainted with the nature of the barricade that was placed around the lawn area indicated on Exhibit A-2? A. Yes.

Q. Will you mark on Exhibit A-2 the portion [243] which is lawn area?

A. The portion which is lawn area?

Q. Which was part of the newly seeded area.

The Court: Do so, with red lines.

(Witness draws on exhibit.)

Q. How have you indicated?

(Testimony of George Yamada.)

A. I crossed it with the red pencil.

Q. That newly planted area extended on out along the lines enclosing the space you have indicated, did it not? A. Yes.

Q. Do you recall the placement and nature of the barricade, if any, which was placed around that area? A. At the present time, no.

Q. You have no recollection of that now?

A. I know that the fence was there, yes, but as to location, no.

Q. The exact location you cannot recall?

A. No.

Q. Incidentally, the pictures that you have referred to, Exhibits A-3 through A-9, are pictures of that same area, are they not?

A. Yes, they are.

Q. And are you acquainted with the general [244] practice of gardeners and landscape contractors, lawn planters, with respect to newly seeded lawn areas? A. Yes, I am.

Q. What, if anything, is the practice with respect to whether or not such areas are fenced?

A. Those areas which are newly seeded are generally fenced in.

Q. Do you know what, if any, reason there is for that?

A. To divert traffic away from these areas so that new seedlings will not be damaged.

Q. In your opinion, is that essential to protection of the area? A. Yes, it is.

Q. Are you acquainted with the practice with

(Testimony of George Yamada.)

respect to the nature of the fences or barricades that are put up around such areas?

A. The fences that are used are in general typical to what were installed at this particular place.

Q. Was there any program adopted by Miller-Hansen for the maintenance of these barricades?

A. Yes, there was.

Q. Are you acquainted with that program?

A. Yes, I am.

Q. What did it consist of? [245]

A. Every morning a man or two men were delegated from Miller & Hansen's work force to check their fences until such time that these lawns were accepted by the Federal Housing Administration.

Miller-Hansen sent their men out to check these fences and repair those that were damaged.

Q. And you state that was done as a matter of practice each morning?

A. Each morning, yes.

Q. Had these lawns been accepted by the Federal Housing Administration prior to November 5, 1952?

A. Yes, they were.

Q. Do you know when, or approximately when, they were accepted?

A. Approximately the first of July these lawns were accepted by the Federal Housing Administration.

Q. And what or who then fell heir to the maintenance of the lawn?

A. Lake Burien Heights, Incorporated.

Q. By "Lake Burien Heights, Incorporated",

(Testimony of George Yamada.)

do you mean the management of the Lake Burien Apartments?

A. The management of the apartments.

Q. By whom are you employed now? [246]

A. By Lake Burien Heights, Incorporated.

Q. And is that the management of the apartments? A. Yes.

Q. Is that one and the same as Carroll, Hedlund & Associates, Inc.? A. Yes.

Q. What, if any, maintenance program was followed with respect to maintenance of those barricades or fences around the seeded area after it was taken over by the project staff?

A. The identical program was carried out by the management. Each morning a man was delegated to check and repair those fences.

Q. Do you know who that man was?

A. Yes, I do.

Q. Who? A. Mr. Dykeman.

Q. Is he still employed at the project?

A. Yes, he is.

Q. Was there any other maintenance work with respect to those fences carried on?

A. Outside of the management?

Q. No. By the Lake Burien Project staff, the management staff.

A. It was a standing order with the work force [247] that at any time should there be discrepancies or things wrong on the outside or inside, that they be reported or repaired as they saw fit.

(Testimony of George Yamada.)

Q. Did that apply with respect to these barricades? A. Yes, it did.

Q. How many men did you have under you and working for you in your crew on or about November 5, 1952?

A. At the time I did not have charge of any men.

Q. What was your occupation at that time?

A. I was assistant to the architectural inspector for the Federal Housing Administration.

Q. You were still acting in that capacity on November 5? A. Yes.

Q. Do you know how many men there were on the outside maintenance force of the staff at that time?

A. No. I am not aware of that count.

Q. Mr. Yamada, what, if any, considerations determine how long such fences or barricades should be maintained?

A. Generally speaking, that is at the discretion of the owner. However, that is controlled by [248] the amount of traffic that is bound to come through, and the weather conditions.

Q. What effect does the amount of traffic have upon it?

A. The traffic has a tendency to wear certain lawn areas out.

Q. And do those restore themselves automatically?

A. Generally not. They have to be reseeded.

(Testimony of George Yamada.)

Q. What effect, if any, does the weather have upon the situation?

A. During wet weather, with your ground being saturated, the foot traffic has a tendency to scuff and dig out these areas more so than during summertime.

Q. In your opinion, was it reasonably necessary to maintain the barricades around the particular area indicated in the pictures and on A-2 and A-1 up to November 5 and thereafter? A. Yes.

Q. Do you know when those areas were seeded?

A. Those areas were seeded in June.

Q. Of that same year?

A. Of that year.

Q. Were you or were you not cognizant of any particular problem confronting the management with respect to the maintenance of these fences?

A. Well, I am aware of the fact that there was one man definitely, Mr. Dykeman, going around every morning to repair these fences.

Mr. Bateman: You may examine.

Cross Examination

Q. (By Mr. Guimont): In November of 1952, you were lining up the work program for workers?

A. No, not at that time.

Q. Oh, I understood that you were maintenance gardener in November of '52?

A. Not then. I was unknown to the inspector.

Q. I see. When did you cease your activities as

(Testimony of George Yamada.)

the one who lined up the work program for the men?

A. That ceased approximately in May of 1952.

Mr. Bateman: May it please the Court, I think there is confusion there. He hasn't ceased his job as maintenance gardener.

Q. (By Mr. Guimont): Well, in May, you ceased being the man who lined up the work schedule for the other gardeners?

A. May of that year, yes.

Q. Of '52? A. Yes.

Q. Did you ever resume that duty? [250]

A. Yes.

Q. When did you resume the duty?

A. October of 1953.

Q. Now, you say that until July 1 of '52 there were two men assigned by the contractors to maintain and repair the fences?

A. One or two men, yes.

Q. And then, after that, you say that the Government took over and only assigned one man to it? A. Yes.

Q. Was there a lessening of difficulty with the barricades after July 1?

A. No. That wasn't the reason for one man.

I merely mention one or two men by the contractor because he may have had a slack period there for additional men, and he might have sent one along to check these fences.

Q. Now, you speak of management's problem in maintaining these barricades.

(Testimony of George Yamada.)

A. I don't recall specially commenting on management's problem.

A. Well, management did have a problem, did [251] they not?

A. Management looked after the fences, yes.

Q. And what was the problem that they were having with respect to these fences?

A. The children at times would go out and cut the fences, cut the wires, or they would swing on these fences and loosen them.

Q. Now, did you receive complaints of the fences being down from time to time?

A. No, I did not.

Q. Did you at any time when you were assigning the work crew—I mean work to the crew—this was before May of '52—did you at any time receive complaints that fences had been torn down or that the barricades were askew the sidewalks?

A. Prior to May of '52, the contract hadn't started yet, and there was no seeding.

Q. There wasn't any seeding? A. No.

Q. Did they have barricades prior to May of '52? A. No, they did not.

Q. It was after that that you ceased being the maintenance man who assigned work to the grounds crew? A. Yes.

Q. Who, after July 1, 1952, had charge of the [252] assigning of work to the maintenance crew?

A. Mr. Suder.

Q. Mr. Suder? A. Yes.

Q. And do you know of your own knowledge

(Testimony of George Yamada.)

whether or not any complaints were received by Mr. Suder, or by you, of fence barricades having come down?

A. I have no knowledge whatsoever.

Q. Did you receive any complaints?

A. I did not.

Q. In your travelling about the grounds, did you see any of the barricades torn down?

A. Yes.

Q. And when did you see those barricades torn down? A. In the mornings.

Q. In the mornings? A. Yes.

Q. Was that every morning?

A. Not every morning, no.

Q. Was it often? A. No.

Q. Was it once or twice a week? A. Yes.

Q. And did you yourself ever go out and make [253] any repairs to the fences? A. Yes.

Q. Was there any thought given to making wooden fences or some other type of fence that wouldn't be torn down so easily?

A. No. The cost would be prohibitive.

Q. Did you ever hear of reports of injuries being received by people resulting to them from these fences being torn down?

A. No, I haven't.

Q. Did you ever notice the barricades in the area indicated on A-1 that was barricading that shaded area that you cross-hatched. Did you ever notice those barricades? A. Yes.

Q. And did you ever see them down?

(Testimony of George Yamada.)

A. No.

Q. How often did you go by that area?

A. That is hard to judge. We were doing an extensive amount of planting. The contractors were doing an extensive amount of planting at that time, and I couldn't tell you how often I went through that area.

Q. Did you yourself ever make the inspections of the barricades? [254]

A. Generally speaking, yes. That is prior to July 1.

The Court: What year?

The Witness: 1952.

Q. And thereafter, did Mr. Dykeman make that inspection? A. Yes.

Q. What did that inspection entail? A walk clear around the project area?

A. Yes, of all areas.

Q. And how long would it take to make that inspection trip? A. About an hour.

Q. If the lawns were accepted by July 1st, does that mean that they had sprouted up?

A. They had sprouted up, yes.

Q. And the turf was that formed?

A. In one sense, yes.

Q. What, then, is the reason for the continuation of these barricades after that date?

A. To divert traffic away so that these lawns would not be scuffed out again. The seed would not arise where they would have to be reseeded.

Q. You took pictures in the spring of 1953?

(Testimony of George Yamada.)

A. Yes. [255]

Q. And in some of those pictures, there are still wire barricades standing, are there not?

A. Yes, there are.

Q. Now, what would be the purpose of those barricades still being placed there?

A. For the same reason, to divert traffic away.

Q. Do you know of any time that these barricades were ultimately removed, generally, from the housing area?

A. I do not know at what date they were removed.

Q. Well, it wouldn't be true, would it, that the only way that they were removed was through deterioration, finally falling down?

A. No, that is not the reason why they were taken down.

Q. Do you know, then, when they were taken down?

A. I would judge that it was in the spring of 1953.

Q. Would it have been before or after you took those pictures of the general area?

A. It would have been after.

Q. After that? Was there anything abnormal or unusual about the growing of this lawn that would take [256] from one spring to the following spring?

A. We have a definite problem of the abuse of tenants walking over these lawns, especially during the winter months when these lawns are soggy.

(Testimony of George Yamada.)

Q. Well, at no time between the time of the planting and the following spring did you remove the barricades? A. I do not recall.

Q. Did you ever have occasion to remove these barricades that had fallen onto the sidewalks?

A. If I saw them, yes.

Q. Well, did you ever do so?

A. I do not recall.

Q. Everyone had the same standing order, did they? A. Yes.

Q. And, now, did they make reports, when they saw that? A. Generally speaking, yes.

Q. Did you ever make a report to anyone?

A. Yes.

Q. And to whom did you make the report?

A. Either to Mr. Brydon or to Mr. Suder.

Q. And Mr. Brydon is who?

A. Mr. Brydon is the manager of the apartments. [257]

Q. Did you know how many complaints you made to him of that situation?

A. I do not recall.

Q. Was it more than once?

A. Possibly yes.

The Court: What situation do you refer to in making your last answer to the last question?

Do you mean the situation of the down wires from the protective fences, or what do you mean?

The Witness: If I did not have a plier or something——

The Court: I just mean, what did you under-

(Testimony of George Yamada.)

stand you were referring to by the use of the word "situation"?

What situation?

The Witness: I don't recall.

The Court: Read the last two questions.

(Last two questions read as follows:

"Q. Do you know how many complaints you made to him of that situation?

Q. Was it more than once?")

The Court: What situation were you referring to?

The Witness: The situation of the wires being down. [258]

The Court: You may inquire.

Q. (By Mr. Guimont): When those wires were down, were they disconnected, that is, from the stakes to which they were attached? Would there be open and free ends?

A. Depending on where they were cut, yes.

Q. Do you know who cut them?

A. No, but generally accepted that the children had been swinging on them, or cutting them.

Q. Referring to that area shown in your cross section on A-1, do you know whether one end of a wire barricade was attached to that telephone pole in the parking strip area?

A. Yes. It was attached to the pole.

Q. You had seen that yourself? A. Yes.

Q. And when you saw it, do you know whether you saw it prior to November 5 of 1952?

A. Well, all summer long.

(Testimony of George Yamada.)

Q. All summer long? A. Yes.

Q. And then in the fall of that year, you didn't see it, probably?

A. I am sure I have seen it.

Mr. Guimont: I believe that will be all. [259]

Redirect Examination

Q. (By Mr. Bateman): Mr. Yamada, you stated that between approximately May 1 of 1952 and October of 1953, you were on loan from the project staff to the Federal Housing Administration?

A. Yes.

Q. As a —?

A. Assistant to the inspector.

Q. Now, during that period, were you or were you not daily on the apartment house site?

A. I was on the site every day.

Q. That was your job, was it, to be there and to watch the work installations being made?

A. Yes.

Mr. Bateman: No further questions.

Mr. Guimont: I have one other question.

Recross Examination

Q. (By Mr. Guimont): Ordinarily when a wire barricade is placed along and around a newly seeded area, is it not usual that they place little cloth markers hanging from the wire?

A. Yes. It is customary to do so, and it was done at the project. However, the children kept

(Testimony of George Yamada.)

tearing [260] the little pieces of string off them as fast as they could be replaced.

Q. Was any effort made after July 1, 1952, to continue replacing those wires by that means? I mean, remarking the wires with those cloth markers?

A. I do not recall.

Q. Do your pictures of A-11 and A-12 that you took in the spring of '53, show any such markings attached to the barricade wire?

A. They do not.

Q. Do the pictures from A-3 to A-10, inclusive, show any such markings on the barricade wires?

A. They do not.

Q. When did they cease placing those markers on barricade wires?

A. I judge sometime in June of that year.

The Court: What year?

The Witness: 1952.

Q. And what is the purpose of placing the markers, such as a piece of cloth or ribbon?

A. To make them more visible.

Mr. Guimont: I believe that is all.

Further Redirect Examination

Q. (By Mr. Bateman): Mr. Yamada, do the pictures shown as [261] Exhibits A-3 through A-10 show any of those wire barricades at all?

A. Not of the type under question.

Q. What sort of barricades, if any, are shown in those particular pictures?

A. On Exhibit A-12 they show——

(Testimony of George Yamada.)

Q. No, I am referring to Exhibits A-3 through A-10.

A. A-3 to A-10, there are no barricades.

Q. What is the situation with Exhibit A-11 and A-12?

A. On Exhibit A-11, there is a steel fence with steel posts and wires.

Q. Is that the same type of barricades which were being used in November of 1952?

A. No, they are not.

Q. What is the situation with respect to those shown in A-10? What is the difference?

A. These fences are more permanent. They are intended to be more permanent than those which were installed after the seeding.

Q. And is it or is it not equally customary to install barricades such as were being used on the project after June of 1952 without the strings and ribbons on the wire? [262]

A. Yes, sir. It has been customary.

Mr. Bateman: No further questions.

Further Recross Examination

Q. (By Mr. Guimont): It is safer to attach, though, either cloth ribbons or ribbons on the barricade wire, is it not? A. Yes.

Mr. Guimont: No further questions.

The Court: Step down.

(Witness excused.)

Mr. Bateman: I would like to call Mr. Hansen.

OSCAR F. HANSEN

upon being called as a witness for and on behalf of the Defendants, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Bateman): Will you state your name, please, Mr. Hansen?

A. Oscar F. Hansen.

Q. Will you spell your last name?

A. H-a-n-s-e-n (spelling).

Q. Where do you live, Mr. Hansen? [263]

A. 5113 Ruggles Street, Seattle 88.

Q. What is your occupation?

A. Landscape gardener, and landscape contractor.

Q. How long have you been so employed?

A. I believe together, Miller & Hansen, for eight years, a little better.

Q. Were you in that same line of work prior to that time?

A. Off and on, for 25 years except for a short period during the depression period.

Q. In the Seattle area?

A. In Seattle. Well, we also worked south of town at times on different jobs.

Q. Have you had the occasion in that work to install lawns, from time to time?

A. Yes, quite a few.

Q. By "quite a few" you mean several each year?

(Testimony of Oscar F. Hansen.)

A. Yes, Buena Vista, Holly Park, and also in Renton.

Q. Any other large lawn areas?

A. Yes, quite a few others.

Q. Were you each time supervisor?

A. In most of them. [264]

Q. Mr. Hansen, did you have anything to do with the installation or re-establishment of lawns at the Lake Burien Apartment Project in 1952?

A. Yes. I was in charge of it.

Q. Did your firm,—by the way—are you self-employed?

A. Yes. We have two partners together.

Q. What is the name of your firm?

A. Miller & Hansen.

Q. And did your firm have a contract for the re-establishment of those lawns? A. Yes.

Q. And during what months of 1952 was that work performed?

A. Well, I believe we started April, May and June, and I don't remember exactly—part of July—but I don't remember. I haven't got the records with me.

Q. Do you know how much lawn area was installed by you at that time?

A. Well, I believe it was perhaps 135,000 feet, but I figure a little better than two acres and a half. Something like that.

Q. And those were in various shaped pieces and parcels, were they? [265]

(Testimony of Oscar F. Hansen.)

A. Yes, lots of small parcels, and some large areas.

Q. What, if anything, did you do with respect to the protection of those areas?

A. Well, we had 1x4's mostly or rough-cut lumber. We placed them at various lengths around eight feet apart, and we used a strand of wire, and it was fastened mostly with staples or tied around the posts in some place to give it strength.

Q. And that was placed where?

A. All around different places where the new seedings were.

Q. Are you acquainted with the general practice in landscape gardening work with respect to the protection of newly seeded lawn areas?

A. Yes, but it was because of many children there. After you seed some place where there is a lot of children, you plant an area there with *grace*, and first thing you know, the children are right in there, spading it up and digging, and you have to provide some temporary fence to keep them out of there. Otherwise, you will never have a lawn.

In fact, we had to re-seed several times in order to get the grass up. Even if you have a fence, it wouldn't help at times. [266]

Q. Your firm, then, put in these barricades such as you have described? A. Yes.

Q. And you are acquainted with general practice in landscaping work in that respect? A. Yes.

Q. Were those barricades of the type generally

(Testimony of Oscar F. Hansen.)

put in or commonly put in to protect new lawn areas?

A. Yes, and they are most practical.

Q. In what respect?

A. Well, they were easy to put up, and easy to repair, and they could be moved easily.

Q. Now, did you have any program for the maintenance of these barricades while the lawns were coming up?

A. Yes, I would walk around part of it in the morning, and I would send a man to look over what I couldn't look over, and I detailed one or two men to fix the fences, depending on how many were down. If there were quite a few down, I would send a couple of men to repair them, and then I usually made the rounds in the afternoon to see if everything was okeh for the night.

Q. And from your experience in this work, you have heard the testimony of Mr. Yamada, have you? [267]

A. Yes.

Q. With respect to the time fences were maintained there in the area shown on Exhibit A-1, can you orient yourself to that portion of the Burien Project, Mr. Hansen?

A. Yes, I know the portion.

Q. You understand that drawing?

A. Yes.

Q. In your opinion, would it be in keeping with good practice for the management of the apartment project to have maintained the barricades around the area on that ground as having been put in new

(Testimony of Oscar F. Hansen.)

lawn area as late as November and December of 1952?

A. Yes. It takes quite a while before you get heavy sod so that you can walk on it without wearing it out in a short time. There is a lot of moisture in that area.

Q. What considerations determine the length of time that such barricades should be maintained?

A. Well, it depends on the soil and the condition of the soil and the growing season has a lot to do with it, the difference in the weather, and also the traffic. People usually travel in that place.

Q. And having those considerations in mind, you think it would have been good practice to have [268] maintained that barricade that long in that area? A. Yes.

Mr. Guimont: I am going to object to that question and move the answer be stricken, it being leading.

The Court: The objection is overruled and the motion is denied.

Mr. Bateman: You may inquire.

Cross Examination

Q. (By Mr. Guimont): Mr. Hansen, did you have a considerable problem during the period that you were on the project with the fences and the barricades being torn down?

A. Well, we had for a few days after they were put up, but then we worked in different areas. We start in one end of the project and we had—some-

(Testimony of Oscar F. Hansen.)

times, we had to watch them right along, and other places, the children left them alone. It depended on the neighborhood.

Q. Now, did you complain to anybody about the difficulty you were having?

A. No. I worked on so many housing projects I was used to it, so I made the best of it.

Q. Did you, when you had the responsibility of barricading the fencing area, did you place on the [269] barricade wire ribbons or pieces of cloth?

A. Yes. We use a coarse twine, and tied it on there. We tried to tie it on everywhere they could put it, but the children used to tear them down, and we finally gave it up.

Q. During the period of time you did that,—that is the best practice, is it not, and the most customary way of marking?

A. It is the customary way in obvious places where people are likely to cross.

Q. Did you have two men fixing these fences all day long?

A. No. I sent one man. I made a round myself and if anywhere it was down, I would go and tell one or two men to go and have the fence fixed.

Q. How often did you make that inspection?

A. Every day.

Q. Every day? A. Every day.

Q. Do you know whether every day there were fences down when you were on the project?

A. Not every day, but most of the time.

Q. Most of the time?

(Testimony of Oscar F. Hansen.)

A. Yes, in certain places.

Q. Do you believe that in that area it would [270] be necessary to make a daily inspection of those barricades? A. Yes.

Mr. Guimont: That is all.

The Court: Step down.

(Witness excused.)

The Court: Call the next witness.

OLIVER ESTER

upon being called as a witness for and on behalf of the Defendants, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Bateman): Will you please state your full name, Mr. Ester?

A. Oliver Ester.

The Court: How do you spell your last name?

The Witness: Ester, E-s-t-e-r (spelling).

Q. (By Mr. Bateman): What is your address?

A. 15243 27th Avenue Southeast, Seattle.

Q. What is your occupation?

A. Landscape architect, and landscape contractor.

Q. How long have you been engaged in that [271] work? A. 24 years.

Q. In the Seattle area?

A. In the Seattle area, elsewhere, too.

Q. How long have you been engaged in that work in the Seattle area?

(Testimony of Oliver Ester.)

A. Well, the work is predominantly in Seattle.

Q. Have you during the years engaged in that work had the occasion to install a number of lawns?

A. Yes, I have.

Q. Have you had the occasion to supervise the installation of additional and other lawns?

A. Yes, I have.

Q. Are you familiar with practices in that occupation or that business in this area?

A. Yes, I am.

Q. And have you been for a number of years?

A. Yes.

Q. Have you heard testimony of Mr. Yamada with respect to the nature of the barricades or fences which were installed around the newly seeded lawn areas in the Lake Burien Apartment Project during the late spring, summer and fall of 1952?

A. Yes, I heard his remarks.

Q. Have you formed any opinion as to whether [272] or not the nature of those barricades conformed with common practice in this area at that time and at the present time for the protection of newly seeded lawn areas?

A. His testimony conforms with the usual practice.

Q. You mean by that that fences of the nature described are of the type commonly used in this area for the protection of newly seeded lawn areas?

A. That is right.

Q. From your experience in this field, do you have an opinion as to whether or not it is necessary

(Testimony of Oliver Ester.)

to protect newly seeded lawn areas by some sort of device for barricade?

A. If you have any traffic problem, it is absolutely necessary.

Q. Is that your opinion? A. Yes.

Q. What, if anything, is determinative of the length of time such protection has to be maintained?

A. It depends on the owner, to some extent. However, it generally runs from six to eight months I have left them up. I have also left them up a year.

Q. What are the considerations that entered into your decision as to what is good practice in that respect? [273]

A. Whether or not the lawn has developed satisfactorily to an extent where it would stand normal traffic.

Q. Does the nature of the traffic in and out the area have any effect on the length of time they should be maintained? A. Definitely.

Q. I will ask you whether or not the condition of the weather then ensuing and forthcoming in the next few months has any effect upon whether or not they should be removed at any certain time?

A. I am not sure I understand just what you mean.

Q. Well, does the amount of moisture in the ground and expected precipitation determine how long the fences or have any effect upon determining how long they should be maintained?

A. Yes, it could.

(Testimony of Oliver Ester.)

Q. What is the situation, and what effect does that have?

A. In a spring planted lawn, if the lawn had not developed satisfactorily, I would consider leaving the barricade through the fall and winter. Generally, I would leave it through the first winter, anyway.

Mr. Bateman: You may inquire. [274]

Cross Examination

Q. (By Mr. Guimont): Mr. Ester, when you yourself erect barricades consisting of a wire fencing, single strand running between stakes, do you place on the wire any ribbon or any cloth marker?

A. Only if the wire is higher than four feet. Anything above probably three and a half or four feet, we would sometimes, or if there is a rather heavy traffic likely to go across, we might or probably would put markers on.

Q. If you were in an area where there were groups of children that you were anticipating might get onto the lawn area, would you in that instance place any markers on the wire if the fencing was only, say, 12 to 18 inches high?

A. We do not put markers on low fences, no.

Q. And that is, you would say, a normal and customary way that landscape gardeners would do?

A. It is the normal practice.

Q. That practice is not followed by all landscape gardeners, is it?

A. That, I couldn't say.

(Testimony of Oliver Ester.)

Q. You have yourself known of many contractors who do place little markers on the wires, have you not? [275]

A. That, I couldn't say.

Q. You have yourself known of many contractors who do place little markers on the wires, have you not?

A. No, I can't say that I do. I merely told you what I do.

Q. What you do? A. Yes.

Q. How long have you been a contracting landscape man? A. Twenty-four years.

Q. Just in this area?

A. Predominantly in the Seattle area.

Q. Where else have you been a landscape gardener?

A. Outside of The Dalles and in Oregon and North and South of Seattle.

Mr. Guimont: I believe that is all.

Mr. Bateman: No further questions.

The Court: You may step down.

(Witness excused.)

Mr. Bateman: May Mr. Ester and Mr. Hansen be excused permanently?

The Court: They are excused.

Mr. Bateman: I would like to call Mr. [276] Brydon as the next witness.

JAMES BRYDON

upon being called as a witness for and on behalf of the Defendants, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Bateman): Will you state your name, please? A. James Brydon.

The Court: Will you spell your last name?

The Witness: B-r-y-d-o-n (spelling).

Q. (By Mr. Bateman): And what is your occupation, Mr. Brydon?

A. Resident manager, Lake Burien Heights.

Q. Where do you live?

A. 1105 Southwest 139th.

Q. How long have you been working as a manager of that apartment?

A. Practically three years and a half at Lake Burien Heights.

Q. You were there then and were manager in November of 1952? A. I was.

Q. Have you ever managed any other apartment project? [277] A. Yes, I have.

Q. Where?

A. I managed one at 4321 Linden Avenue, from 1938 to 1946.

Q. What was it?

A. That was a small unit court.

Q. That is in Seattle?

A. Yes. And from June of '48 to October of '50, I managed a 202 unit court project in Boise, Idaho.

(Testimony of James Brydon.)

Q. And after that?

A. I came back here and went out to Burien Heights.

Q. And you have been there ever since?

A. For three years.

Q. How many units are there in the Lake Burien Project? A. 544.

Q. By "units", you mean housing units?

A. Apartments, yes.

Q. How many apartment buildings are there?

A. 44.

Q. Do you know approximately the area that the project covers?

A. Somewhere around 35 acres. [278]

Q. What staff do you have there in connection with the management and the operation of that apartment building?

A. At the present time?

Q. Yes.

A. Approximately—I think there are 25 maintenance men and three ladies in the office.

Q. Was that approximately the situation in November of 1952?

A. No. There were 22 men outside of myself and the three ladies in the office.

Q. Mr. Brydon, showing you Defendants' Exhibit A-13, can you tell me from an examination of that, how many men you had on staff in November of 1952 as outside maintenance men?

A. Strictly grounds men?

(Testimony of James Brydon.)

Q. Outside maintenance men and then distinguish if there is a distinction to make.

A. Nine outside groundsmen and five general maintenance men, also two garbage men.

Q. Would you describe the duties of the grounds maintenance men?

A. It was strictly a grounds maintenance proposition, mowing, watering, trimming, fixing fences, and whatever outside work, street sweeping, et cetera. [279]

Q. Will you describe the work of the general maintenance?

A. General maintenance men were carpenter work, plumbing work, electrical work, heaters, furnaces, general maintenance service calls, et cetera.

Q. Would you describe the work of the garbage maintenance crews?

A. The garbage maintenance crew were strictly picking up garbage and refuse from the basements.

Q. You were at the project during the lawn re-establishment program that was carried in the spring, summer and fall of 1952?

A. I was.

Q. Are you acquainted with the barricades or fences which were placed around the newly seeded areas?

A. I was.

Mr. Bateman: Mr. Bailiff, would you show the witness, please, Exhibits A-1 and A-2?

(Bailiff hands exhibits to witness.)

Q. (By Mr. Bateman): You are now looking at what exhibit, Mr. Brydon?

A. A-1.

(Testimony of James Brydon.)

Q. Are you aware of what that drawing represents? [280] A. Yes, I am.

Q. And are you acquainted with that portion of the project? A. Yes.

Q. And you have oriented yourself to where that is situated in the Project? A. Yes, sir.

Q. Would you describe to me the duties of the two garbage men you referred to on your staff?

A. The garbage men three days a week pick up the garbage from the apartments themselves, and three days a week they pick up from the basements, and they are in and around the project all day long, in the front streets and in the parking areas.

Q. That is to say, a pickup is made from each of the buildings, each day, by the garbage crew?

A. Either upstairs or down.

Q. And they enter or leave the building in the process of that operation?

A. That is right.

Q. And that was the procedure or practice carried out during November of 1952?

A. That is right.

Q. Do you know what time of day that pickup was made from the building or buildings which are shown on [281] Exhibit 1?

A. Well, I would say somewhere between ten and eleven in the morning.

Q. Was there any other daily task performed by anyone on the outside crew that took him in the vicinity of the apartment project that is shown in Defendants' Exhibit A-1? A. Yes.

(Testimony of James Brydon.)

There was one man who was delegated every morning to make the rounds through the project fixing fences.

Q. Who was that man? A. Mr. Dykeman.

Q. And was he so delegated and assigned in November of 1952? A. He was.

Q. Was there any other member of the outside maintenance crew that made a daily round of the area shown on Exhibit A-1?

A. Not for any specific purpose.

Q. Refreshing your memory, do you know whether or not there was a man assigned to lawn pickup work?

A. Yes, there was. I forgot that.

Q. Of what did his duties consist?

A. His duties consisted of picking up papers [282] and sweeping streets.

Q. Was it his duty to make a round each day?

A. Five and a half days a week.

Q. That included the area on the project shown on that exhibit? A. That is right.

Q. Do you know what time of day his assigned task would carry him through that area?

A. No, I don't exactly, because sometimes he went on one side of the street, and sometimes down the other first. Normally, I believe it was after lunch.

Q. What were the working hours of the outside maintenance crew?

A. From eight to twelve, and twelve-thirty to four-thirty.

(Testimony of James Brydon.)

Q. How many days a week?

A. Five and a half days a week.

Q. Monday through the middle of the day on Saturday?

A. That is right.

Q. Was there any other outside personnel?

A. Yes, there was a night man.

Q. What were his working hours at that time?

A. At that time, they were 5:30 to 2:30. [283]

Q. And what was the general nature of his duties?

A. He was maintenance and night watchman, maintenance probably for the first three or four hours in the evening.

Q. And who was night watchman at that time?

A. Mr. Cvetikovs.

The Court: How do you spell it?

The Witness: C-v-e-t-i-k-o-v-s (spelling).

Q. (By Mr. Bateman): That is the gentleman who testified this forenoon?

A. Yes.

Q. Referring to the outside maintenance crew, were they or were they not given any instructions or orders with respect to the fences which were placed around this new lawn area?

A. All outside grounds crew have been given orders ever since I have been there that anything out of the ordinary seen outside of their immediate work that was wrong, to report it to the office or to the superintendent, if they saw it on the grounds. That would mean fences or anything of that kind that was a menace to the project.

Q. Were those reports made to you? [284]

(Testimony of James Brydon.)

A. Sometimes to me, and sometimes to Mr. Suder, the superintendent.

Q. Who is Mr. Suder?

A. Superintendent.

Q. Of what?

A. Of the Lake Burien Housing Project.

Q. Is he assistant to you as manager?

A. That is right.

Q. In what particular area of the problem of managing that unit do his duties and supervisory duties fall?

A. All over the whole project, inside and out.

Q. Along maintenance work lines?

A. Maintenance, inspections, anything.

Q. Do you have any office personnel other than yourself?

A. Yes, we have three ladies in the office.

Q. In general, what are their duties?

A. Mrs. Wilson is the assistant manager and office manager. Mrs. Ester is the stenographer, and Mrs. Baker is the bookkeeper.

Q. Do you have any method of handling complaints which may be received from tenants?

A. Yes, we do. [285]

Q. What is that method?

A. When those telephone calls come in, or people come in, they are made on a regular form and hung up on a spindle in the back room outside of the office, to be picked up by the maintenance men as they come and go all day long.

(Testimony of James Brydon.)

Q. Who receives such reports, complaints, and questions? A. You mean in the office?

Q. Yes.

A. Either Mrs. Ester, Mrs. Wilson or Mrs. Baker, depending on whether the others are busy.

Q. And it is the practice, then, to make out a work request on those? A. That is right.

Q. Was that practice followed with respect to complaints, if any, with respect to fences?

A. Every detail in the place.

Q. Including fences? A. Yes, sir.

Q. I will ask you whether or not the tenants were ever given permission by you or through your office to be on lawn areas which were surrounded by these barricades? A. Never. [286]

Q. Calling your attention to Exhibit A-1, Mr. Brydon, are you acquainted with the exterior lighting facilities in that area? A. Yes, I am.

Q. Can you designate on A-1 what exterior lights there are in that area?

A. You mean you want me to mark it on there?

Q. Yes, if you will, with a blue pencil.

(Witness draws on Exhibit A-1.)

Q. Have you done so?

A. Yes, I have.

Q. Would you put your initials "J.B." after each of those designations?

(Witness writes further on Defendants' Exhibit A-1.)

Mr. Bateman: May I see the drawing?

(Testimony of James Brydon.)

(Bailiff hands Defendants' Exhibit A-1 to Mr. Bateman.)

Q. (By Mr. Bateman): Mr. Brydon, I wish that you would check Exhibit A-1 again and examine the places where you put a designation of lights, and be certain and assure yourself that you correctly understand the drawing. Will you describe for me where in that area there are exterior lights, outside lights? [287]

A. Yes. There is one on the building just directly west of the building in question.

Q. And tell me whereabouts on that building is that light located?

A. About 20 feet above the ground, I would say, right under the eaves.

Q. How high are those buildings? How many stories? A. Two.

Mr. Bateman: Mr. Bailiff, may I see the photographs, the large photographs, Exhibits 3 through 10?

(Defendants' Exhibits A-3 through 10, inclusive, handed to Mr. Bateman.)

Q. (By Mr. Bateman): Showing you, Mr. Brydon, Exhibits A-4 and A-10, are those pictures of the light which you have just designated?

A. That is right.

Q. As being on the building lying west to the telephone pole which is centered on this drawing A-1? A. That is right.

Q. How do you designate, or in what manner do you refer to that type of light?

(Testimony of James Brydon.)

A. Area lights.

Q. Showing you, Mr. Brydon, Exhibit A-7, do you recognize that as being a photograph taken in the area [288] shown on A-1? A. Yes, sir.

Q. Calling your attention to the light which is shown in that picture suspended from an arm on a light pole, will you designate on drawing A-1 the position of that light?

(Witness writes on Defendants' Exhibit A-1.)

Q. And will you put your initials after the designation? A. Yes, sir.

(Continues writing on Defendants' Exhibit A-1.)

Q. Now, how do you designate that light that you have just indicated on the drawing?

A. That is a street light.

Q. Is that a source of illumination at night in this particular area? A. Yes.

Q. Are there any other lights that provide night illumination in this area shown on Exhibit A-1?

A. They are not shown on Exhibit A-1.

Q. I mean, are there any other lights?

A. Five floodlights over in the shopping [289] district.

Q. And I will ask you whether or not they supply illumination in the area shown by the drawing, Exhibit A-1? A. Yes, they do.

Q. Have there been any changes in the outside illumination that you have just referred to since November 5 of 1952?

(Testimony of James Brydon.)

A. No, there hasn't.

Mr. Bateman: You may inquire, Counsel.

The Court: I believe at this time and place, we will take a short recess of about five minutes.

(Recess.)

The Court: You may resume the interrogation.

Mr. Bateman: May it please the Court, may I interrupt for just one moment? I would like to ask that the witness, Mr. George Yamada, be excused.

The Court: Any objection?

Mr. Guimont: No objection.

The Court: That witness is excused.

Cross Examination

Q. (By Mr. Guimont): Mr. Brydon, you have nine men that are on outside work on the grounds at all times, is that [290] right, summer, winter?

A. Sometimes in the summer, more.

Q. Sometimes more than that? A. Yes.

Q. And along about November, you would have at least nine men on the grounds?

A. Well, they wouldn't be out on the grounds all the time. It would depend on the weather conditions. If they weren't outside, they would be inside.

Q. And in addition to that, you have two garbage men and five general maintenance men?

A. Yes.

Q. In removing garbage from the area shown in A-1, the building that was occupied by the Dooleys, are you familiar with that building?

A. Yes.

(Testimony of James Brydon.)

Q. And in removing that garbage, would you, with a blue pencil, trace the steps that the garbage people would take in removing garbage from that building?

A. The one they were in in '52?

Q. Yes. Just make a dotted line showing where they would remove garbage from the building and where they would go in taking it, if you know.

(Witness draws on Defendants' Exhibit A-1.) [291]

Q. Am I accurate in saying that you have marked a line showing that the garbage men would come out of a door on the south side of the building, walk west on the outside of the building, and then travel north to the parking strip, or an asphalt area? A. That is right.

Q. West or north of the building?

A. Yes.

Q. Would they have a truck parked in that asphalted area? A. Yes, they would.

Q. In doing that, they would be across the parking strip, would they, Mr. Brydon, that is east of the telephone pole placed in the section of the parking strip that is north of the building?

A. I didn't get that question, please.

Q. You have marked on this that they have crossed apparently an area off of the sidewalk area itself with the lines you have marked, is that correct?

A. There is a sidewalk direct from the parking

(Testimony of James Brydon.)

area directly south to the south side of that building and then into the building.

Q. Yes?

A. And that is the way that they would walk.

Q. Would you re-do this and mark it much heavier [292] so that it can be seen?

A. Yes, I will. (Draws on Defendants' Exhibit A-1.)

Q. Did you receive any reports from any garbage men in November of 1952 of any fencing being down?

A. I wouldn't remember. They came in from time to time, but I wouldn't remember dates.

Q. Did you keep any permanent evidence of reports and complaints that were received?

A. We kept those reports for back about a year, and then they were destroyed, because there were so many hundreds of them that came in for one thing and another.

Q. Did you have many reports of fences being down?

A. Quite a few.

Q. And when they were down, were the reports that they were strewn across the sidewalk areas?

A. Sometimes.

Q. When they were strewn across the sidewalk areas, did you yourself ever go out to inspect them?

A. Yes.

Q. And when you were out there, did you find wires curled? [293]

A. Sometimes.

Q. Did you yourself ever trip over any of these wires?

A. No, I didn't.

(Testimony of James Brydon.)

Q. Did you have any complaints of anyone else ever tripping over the wires?

A. Not personally, no.

Q. Did you have any complaints of those wires being down at the nighttime?

A. No complaints at night. If they came in at night, why, they were left on my desk, and I got them in the morning.

Q. Did you testify that the complaints did come in at night?

A. Occasionally, they did come in at night, and the night man would get them.

Q. Now, this man whose duty it was to inspect wires, was that his sole duty?

A. That was his sole duty for whatever time it took him between 8:00 o'clock in the morning and he got the job done each day.

Q. And how long would it ordinarily take him to do that?

A. I have seen it take him an hour, two hours, or all day. [294]

Q. If it were all day, would it be because there were a lot of wires down?

A. That is right.

Q. Who would be cutting these wires?

A. Well, they would be cut by children, be cut by the paper boys, be cut by the grown-ups, cut by the tenants, grown-up tenants, being swung on and broken.

Q. Now, you don't recall having received any notice from any of your maintenance men that they

(Testimony of James Brydon.)

had repaired a wire that was located on an area that is shown on Exhibit A-1 and circles the general lawn area where that pole is placed in that parking strip area? That is just west of the Dooley apartment. A. No, no specific call, no.

Q. Do you recall any complaints having been made to that area between—— A. No.

Q. (Continuing) ——between Saturday prior to November 5, 1952 and November 5, 1952?

A. No, because my orders were for the men to fix them as they came to them.

Q. Were any notations made of repairs having been accomplished?

A. No. That was just a routine matter for [295] fixing them as they came to them.

Q. If there had been any complaint made of that particular wire being down, by now the records are destroyed, do I gather that?

A. Yes. A lot of those old records are.

Q. When did you first become aware, Mr. Brydon, that Mrs. Dooley had fallen in that area?

A. On December 10 or 12, right in there.

Q. Was that after she had returned from the hospital? A. Yes.

Q. Were you present on the project from November 5 on? A. Yes.

Q. Did anyone else at the project hear of the accident? A. Yes.

Q. Who had heard of it?

A. Mrs. Wilson, the office manager.

Q. When did she first hear of it, do you know?

(Testimony of James Brydon.)

A. Same day that I did. She told me.

Q. She told you? A. Yes.

Q. You heard about this in December, you say?

A. That is right. [296]

Q. Of 1952? A. Yes.

Q. At that time, did you have the slips from the spindle for the complaints that had been received?

A. No.

Q. You didn't destroy them until a year later, you say?

A. I didn't even keep all of them. There were so many of them—a minor detail like a fixed wire was simply repaired and checked by the man that repaired it, and then we destroyed it if it wasn't any too important. That was just a matter of daily maintenance. It wasn't any specialty.

Q. Now, would you point out to the Bailiff and perhaps he could point it out to me where that street light is that you say to me is a source of illumination? A. Right here (indicating).

The Court: Say it in words if you can as to location.

The Witness: On that building directly west of the building Mrs. Dooley lived in.

Q. (By Mr. Guimont): Is that a street light?

A. No. That is an area light.

Q. Is that a floodlight in any sense? [297]

A. No, it is a 300 watt light with a daylight globe around it.

Q. And would you have any knowledge of

(Testimony of James Brydon.)

whether or not it was on on the evening of November 5, 1952? A. Yes.

Q. And just how would you have that knowledge?

A. From the light company and our records.

Q. And you have checked that record?

A. That is right.

Q. Did you check the records to determine whether the floodlights were on at night?

A. You mean on the street?

Q. In the shopping area.

A. No. I didn't, because I have no jurisdiction over the shopping area.

Q. Now, you don't know whether the floodlights were on or off?

A. I presume they were, because they were checked every week like ours by the City Light.

Q. But you actually have no knowledge?

A. Actually have no knowledge, no.

Q. Now, have you inspected the area yourself near that pole? A. Yes.

Q. Since this has come about? [298]

A. Yes.

Q. That light that is on the building west of the Dooley building, that is obstructed, is it not, that is, the light from it is obstructed by a picket fence?

A. No, it is not.

Q. How far back from the picket fence is it?

A. Oh, I would say ten or twelve feet, and about 15 feet higher than the picket fence.

Q. Is there any shadow cast by that fence?

(Testimony of James Brydon.)

A. Directly on that sidewalk, no.

Q. Is there any shadow, cast by that fence, Mr. Brydon, at any place?

A. Yes, right under the fence.

Q. And how far out does that shadow extend from that fence?

A. I would say probably four or five feet, six feet, maybe.

Q. Is there beyond the picket fence a pipe fence?

A. Yes. There is a play yard there with a fence around it, but that is a low fence.

Q. How big a pipe top has that play fence?

A. Well, it is a four-foot fence with a pipe top which I think is two-inch, inch and a half. [299]

Q. Does that picket fence cast a shadow across the walk?

A. No. That isn't a picket fence. It is a wire fence.

Q. Does the steel fence cast any shadow?

A. Not to speak of, because it is an open fence. It is an open mesh fence.

Q. Does the two-inch steel pipe topping cast a shadow?

A. Not noticeably, no.

Q. You have inspected specifically for it?

A. Yes, I have.

Q. And when did you make your inspection?

A. Oh, I made it two or three times, and the last time, last night.

Q. And when you made the inspection, the light was on?

A. Yes, sir; it was.

(Testimony of James Brydon.)

Q. When you made the inspection, were the floodlights on? A. Yes, they were.

Q. How far from this area are those floodlights?

A. Oh, I would say approximately 150 feet.

Q. Then you differ with Mr. Dooley who places them about 350 feet, is that so? [300]

A. I don't know. I don't remember what Mr. Dooley said. I may be wrong in my estimation of the distance there.

Q. Do you wish to try and figure it out?

A. Let's see. Yes. Yes, I will change that to around 250 to 275 feet. Thank you.

Q. Now, did you have considerable complaints from the time that the landscape gardener turned over the lawns to your crew until November of 1952, did you have considerable complaints about the fence being down?

A. Oh, we had a few, not too many, because of the fact that the landscape man was taking care of them himself.

Q. I mean, after he left.

A. After he left, we had a few, but the fact that we were around every day took care of most of them. If they happened late or at night or in the evening, then we would catch them occasionally.

Q. When did you make your inspection last night? A. Last night?

Q. Yes.

A. About a quarter of eight, I think.

Q. Did you see Mrs. Dooley there at that time?

A. No, I didn't.

(Testimony of James Brydon.)

Mr. Guimont: That will be all.

A. (Continuing) I am not sure of exact time, but I would say that it was somewhere about that time.

The Court: You may step down.

Mr. Bateman: May I ask on redirect just one question?

The Court: Have in mind, I believe you spoke of the possibility of finishing this afternoon. Will you kindly have that in mind? You may proceed.

Redirect Examination

Q. (By Mr. Bateman): In making an inspection examination of the lighting condition last evening, did you check your ability to read by the light in the vicinity shown on Exhibit A-1?

A. That is right.

Q. Where were you standing at the time?

A. Right by the telephone pole.

Q. And what did you do?

A. I just took my card case out of my pocket, and held a calling card out about a foot from my face and I was well able to read it.

Q. Showing you Exhibit A-8, calling your attention to the top of the telephone or light pole [302] there and an object on it, I will ask you whether or not that is one of the floodlights that you refer to as being around the shopping center?

A. Yes, it is.

Q. And how many are there?

A. There are five altogether, I believe.

(Testimony of James Brydon.)

Mr. Bateman: No further questions.

Recross Examination

Q. (By Mr. Guimont): What was the condition of the weather last night out there?

A. At the time I was out, it was somewhat overcast. It started in to rain just as I got back to my apartment, just a little bit.

Q. Had it been raining before?

A. No, not when I went out.

Mr. Guimont: No further questions.

Mr. Bateman: No further questions.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Bateman: May I call Mr. Suder, please?

CLARENCE SUDER

upon being called as a witness for and on behalf of the Defendants, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Bateman): Will you state your name, please? A. Clarence Suder.

Q. And where do you live, Mr. Suder?

A. 2226 Eastmont Way, Seattle.

Q. What is your occupation?

A. I am the maintenance superintendent at Lake Burien Heights.

Q. And how long have you been so employed?

(Testimony of Clarence Suder.)

A. About three and one-half years.

Q. What are your duties as such?

A. To supervise all maintenance work in the project, both inside and outside, and to keep tabs on the workmen, instruct them in their duties, if necessary.

Q. You are acquainted with the lawn re-establishment program that took place there in 1952?

A. I am.

Q. And with the fences or barricades which were maintained around the newly seeded areas?

A. Yes.

Q. And, directing your attention to Exhibit A-1, are you acquainted with the area of the Lake Burien Heights Project shown in that exhibit?

A. Yes, I am.

Q. And you understand that drawing, do you?

A. Yes.

Q. You are thoroughly oriented to it?

A. I am.

Q. Showing you Exhibits A-3 through 10, do you recognize those as pictures taken in that area of the project? A. Yes, I do.

Q. And I believe each one of those pictures shows a telephone call rather centrally located in the picture? A. One of those—

Q. There may be one or two that do not show the light, but can you locate yourself from those pictures with respect to that telephone pole shown on the drawing in A-1? A. Yes, I do.

Q. Can you very quickly, if possible, indicate

(Testimony of Clarence Suder.)

by a small number on Exhibit A-1 the position from which each one of those pictures was taken, and let the number [305] you put the designation on with be in red pencil and be the same number as appears on the exhibit, that is the corresponding exhibit number? If you come to one that is not shown or does not pertain to that precise area, please indicate.

A. I believe all of them are shown (marking Defendants' Exhibit A-1).

Q. Mr. Suder, will you now at each one of those numbers that you indicated to indicate the position where those pictures were taken, point an arrow in the direction in which the camera was pointed at the time?

A. I believe I have them all marked.

(Further drawing on Defendants' Exhibit A-1.)

Q. Thank you. Now, Mr. Suder, in connection with your duties as maintenance supervisor at the project, and you were so employed on November 5, 1952?

A. Yes.

Q. Will you tell me at that time what daily maintenance operations were carried out in the vicinity of that area shown on Exhibit A-1?

A. Daily there was the inspection and repair of any fences that were up at that time that might need repair.

Then, aside from the regular repair of the [306] fences, there was the round that one employee made in picking up papers, sticks or stones or anything

(Testimony of Clarence Suder.)

on the lawn area that was not supposed to be there.

Q. Do you know what time of day his rounds were made in that vicinity?

A. At various times. That would depend a great deal on the amount of material or refuse found on the lawns from the time he started out at 8:00 o'clock in the morning until he finished his rounds at 4:30 in the evening.

Of course, during the day, there was also sweeping of areas and streets, which would include that vicinity there.

Q. Was there any other daily maintenance operation in that vicinity?

A. Of course, as mentioned before, there was the daily garbage pickup. Monday, Wednesday and Friday, the garbage collectors picked up the garbage from the apartments. That would be from the hallways, and on Tuesday, Thursday and Saturday, they picked up the refuse from the basements of these buildings. At that time then they would pass this area, through this area, in this vicinity.

Q. Now, is that true with respect to each of the operations you have referred to? [307]

A. Yes, that is.

Q. And by "this area", you indicate the area shown in Exhibit A-1?

A. That is the area in question.

Q. Were the operations that you have referred to carried out under your supervision?

A. Yes, they were.

(Testimony of Clarence Suder.)

Q. And those men were subordinate to you and under your direction? A. Yes.

Q. What, if any, instructions were these men given with respect to the barricade fences around this lawn area?

A. Those particular men, as well as all other men under my supervision were instructed to repair those fences if it was possible to repair them at the time, or to report any repairs necessary on them.

Q. You referred to other men. You have other men under your jurisdiction?

A. Yes. At that time, 21 men besides myself.

Q. What was the general nature of the other men under your jurisdiction?

A. As I recall, nine of them were included in the outside ground crew as we designated them. Five were janitors and three were general maintenance men, and [308] two were garbage collectors. I believe that takes care of it.

Q. Did these men in their duties have occasion to pass to and fro, or back and forth over the project site?

A. At various times they did. It would depend on how their work was lined up, and where they were needed. If they were needed in that vicinity, naturally, they would pass through there.

Q. With respect to the daily operations you have mentioned, however, that covered this vicinity in A-1 in each instance every day?

Q. What was the method of handling reports

A. Yes, it did.

(Testimony of Clarence Suder.)

that might be turned in by men under your jurisdiction as to fences down?

A. Generally, those reports came directly to me, and I would make out a work order for the particular employee who was to take care of that type of work, whatever it was. If it was fixing fences, Clayton Dykeman received the order.

If it was some other duty, then the man who was generally designated for that work, such as a plumber, carpenter, or gas furnace man, or general utility maintenance. Those men were all in the area at [309] various times of the day.

Q. If the report referred to a fence out of order, what was your practice with respect to caring for that?

A. It was given to one of the employees, generally on the ground crew, to take care of. There have been instances, however, when one of the maintenance men would be handy in the back office where they generally came in to get these work orders, and he would be dispatched to take care of it.

Q. What other source or sources were there of these work orders that you refer to?

A. Many of them came in by 'phone to the front office, in which case one of the three office ladies wrote up the order and then it was brought to the back room, put on a spindle there for the workmen to take care of.

Q. The source of the telephone reports were tenants in the Project? A. Were tenants.

Q. Or, other workmen, possibly?

(Testimony of Clarence Suder.)

A. Occasionally a workman has 'phoned in a report of that nature.

He happened to be in an apartment where there was a 'phone available to him. [310]

Q. What are your working hours at the project?

A. From eight o'clock until twelve noon, from twelve-thirty 'til four-thirty.

Q. And that was so on November 5, '52?

A. That is right.

Q. When were the reports, complaints, or reports of conditions which originated, work requests, taken care of?

A. Those were taken care of between those hours.

Q. And this spindle that you have referred to, that is placed on your desk, is it?

A. That is right.

Q. Were those reports handled daily as they came in, or were they carried over?

A. They were handled daily.

If they were carried over, it was due to the fact that they were not of an emergency nature, and could be carried over to a more convenient time.

Q. Do you ever recall in the time you have been there, and while the fence barricades were up around the grass areas, ever carrying over a request for a fence repair? A. I did not.

Q. Those were handled daily before you left?

A. I did not.

Q. Those were handled daily before you left?

A. Yes, they were.

(Testimony of Clarence Suder.)

Q. I will ask you whether or not any request was made out with respect to the daily fence repair procedure that Mr. Dykeman followed?

A. No. That was just accepted by him as one of his duties, and at eight o'clock in the morning, he proceeded to make his rounds of inspection and repair of those fences, and some of the time he used a wheelbarrow, hammer, nails or staples, rolls of wire, and stakes that he took with him in order to make those repairs on the site.

Q. Was there any interruption in the servicing and maintenance of those fences in that manner between the time they were put up in the summer of 1952 and sometime after November 5, 1952?

A. Only if we deemed that a lawn area was sufficiently well established that the fences were no longer necessary. As long as the fences were necessary, that was the daily practice, to go out and repair them.

Q. Maintenance? A. Yes.

Q. I take it then there was no discontinuance [312] of that maintenance service in September or October of 1952? A. No. There was not.

Q. Did you have any supervision over Mr. Cvetikovs, who attended to the area lights in the vicinity of the project? A. Yes, I did.

Q. What was that?

A. When Mr. Cvetikovs first came to work for us, I would write a work order for him to change the clocks at a time so that the lights would come on before it got dark. I did that regularly until

(Testimony of Clarence Suder.)

such time as I knew that he was in the habit of doing that and then merely told him that from this time forward, I would like to have him take care of that fortnightly, which he has done.

I know that he has done that, because frequently I checked myself to check these clocks myself to see that they are set properly.

Q. What were your instructions to him with respect to the time that he should set the clocks to turn on the lights?

A. Those should be set according to, and those were the instructions, that the clocks should be set so that the lights come on ten to fifteen [313] minutes after sunset, so that they are on before the area becomes darkened to the extent that it might be dangerous to travel through that area.

Mr. Bateman: No further questions. You may inquire.

Cross Examination

Q. (By Mr. Guimont): These daily fence repairs, what precipitated that much care on your part?

A. The fact that children and adults both destroyed those fences to some extent during the day or during the 24 hours of the day.

Q. Now, did you feel that it was a dangerous condition that would develop from the disrepair of the fences?

A. Yes, I did. It was dangerous in two respects. It would be dangerous to an individual travelling

(Testimony of Clarence Suder.)

there, and, also, it is dangerous to the lawn area itself.

Q. Now, did it ever occur to you that it might be safer to erect a different type of fences?

A. It could possibly be safer, but even hurricane fences that we have out there around the playyard areas have been partially destroyed, and that is one of the stoutest fences that you can put up. [314]

Q. But that would have been a safer construction than the type you used and employed?

A. That would have been a safer construction, yes.

Q. Now, did you yourself ever have occasion to make any repairs to the fence wire, to the wire?

A. Frequently, I have.

Q. Now, frequently—how often?

A. Sometimes once a week, sometimes several times a week.

Q. And that would be on a casual walk through the area, or through the project that you yourself might make, is that so? A. That is right.

Q. And that would occur at what hour of the day, if you know?

A. Any time between 8:00 a.m. and 4:30 p.m.

Q. In other words, it would occur any time that you happened to be walking through the project, you were apt to run into a broken down wire fence?

A. That is right.

Q. And would that wire be sometimes curled across the sidewalk?

A. Sometimes. They seldom ever were straight.

(Testimony of Clarence Suder.)

Q. Did you give any thought to making an [315] inspection tour through the area after the children went into their apartments or retired, in other words, along towards evening?

A. Yes, and I frequently did.

Q. And did you ever find any defects at that hour of the day? A. Occasionally.

Q. You didn't assign any men, though, to sort of clean up before the darkness would fall, did you?

A. No. Since Mr. Cvetikovs was on, he could take care of those in his rounds, also.

Q. But did he make any actual walk throughout the grounds in the area?

A. Oh, yes; he did. That was one of his duties for a patrol in that respect.

Q. You don't know whether the lights were on on that particular evening, November 5, 1952, do you? A. I do not.

Q. Do you know of any occasion in the past two and one-half years when they had any light failure in that area?

A. Yes. There was a light failure just recently.

Q. And when they do have a light failure, [316] what occurs to your switches, your time switches for the lights to be turned on?

A. Those time switches would lose the amount of time in which the power failure occurred for the duration of the power failure, and then would automatically start up again, but our procedure in that event would be to correct the time on the time clocks.

(Testimony of Clarence Suder.)

Q. Now, did you receive many complaints of the tenants with respect to these barricades being down? A. Very seldom.

Q. You took no notice of them yourself, is that it? A. Yes.

Mr. Guimont: That is all.

Mr. Bateman: You may step down.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness.

Mr. Bateman: Will you come forward, Mr. Dykeman? [317]

CLAYTON DYKEMAN

upon being called as a witness for and on behalf of the Defendants, and upon being first duly sworn testified as follows:

Direct Examination

Q. (By Mr. Bateman): Mr. Dykeman, will you state your full name, please?

A. Clayton David Dykeman.

Q. Where do you live, Mr. Dykeman?

A. I live at 10029½ California Avenue.

Q. Where are you employed?

A. At Lake Burien Heights Housing Project.

Q. Were you employed there on November 5, 1952? A. I was.

Q. When did you go to work there?

A. I went to work, I am pretty sure that it was the 23rd of July.

(Testimony of Clayton Dykeman.)

Q. Of 1952? A. Right.

Q. And under whom were you working? Who was your immediate superior?

A. Mr. Suder.

Q. Were you assigned any particular job or duty [318] at the project when you went to work there with respect to the barricade fences which were around the newly seeded lawn area?

A. That was my first work in the morning.

Q. What assignment did you receive in that respect?

A. Well, I was to oversee the whole fence of the whole project, and fix all broken places.

Q. What routine or practice did you follow or were you instructed to follow in that respect?

A. Well, we didn't go the same way every day, but we had to make the rounds of the whole fence every day, I did.

Q. When did you that?

A. As soon as eight o'clock come, I started.

Q. And how long did you stay with that job?

A. Well, I still had that job when I got laid off.

Q. I mean, how long each day?

A. Oh, that varied; some days, it wouldn't take but, oh, maybe an hour, or an hour and a half, and other days, I was somewhere near the whole day.

Q. When did you quit?

A. I got laid off the 15th of November.

Q. Of what year? [319] A. 1952.

Q. You were constantly at that job then, from July 23 until November 15, 1952?

(Testimony of Clayton Dykeman.)

A. Right.

Q. Mr. Dykeman, how long each day did you stay with that work?

A. Well, as long as——

Q. Until the fences were fixed?

A. Yes, and then I was doing other work. If I would see anything broke, why, I would repair it.

Q. What equipment did you take with you in making your rounds?

A. Well, I had stakes and axe and hammer, pliers, and staples.

Q. Anything else? A. Well,——

Q. Wire? A. Wire.

Q. What sort of wire was used? Do you have a sample of the wire that was used? Would you hand it to the Bailiff, please?

Mr. Bateman: Will the clerk please mark that for identification?

The Clerk: It will be Defendants' Exhibit [320] A-16.

(A piece of wire marked Defendants' Exhibit A-16 for identification.)

Q. (By Mr. Bateman): Showing you Defendants' Exhibit A-16 for identification, will you please tell me what that is, Mr. Dykeman?

A. That is the size wire that they used on the fence that surrounded the lawns.

Q. During the period of time you have testified you were maintaining them?

A. That is right.

Mr. Bateman: I offer that in evidence.

(Testimony of Clayton Dykeman.)

Mr. Guimont: No objection.

The Court: It will be admitted.

(Defendants' Exhibit A-16 received in evidence.)

Q. (By Mr. Bateman): Will you tell me how the fences were constructed?

A. Well, they were stakes drove along the edge of the sidewalk about, oh, from four to 16 inches off the walk, and this wire was stretched on these posts, and stapled. [321]

Q. Stapled to the posts?

A. To the posts.

Q. About how high off the ground was it?

A. Well, I imagine they were 18 inches to two foot.

Q. Can you give me an estimate of approximately how far apart the stakes were?

A. Well, from eight to ten feet.

Q. Was that the nature of the construction of the fence in the area shown in Exhibit A-1?

Mr. Bateman: Mr. Bailiff, will you show that to the witness, and also show the witness Exhibit A-2?

(Defendants' Exhibits A-1 and A-2 handed to the witness.)

Q. (By Mr. Bateman): Calling your attention, Mr. Dykeman, to Exhibit A-2, and to the area that is marked in a red cross patch on that exhibit to indicate newly seeded area, was there a fence along the north side of the walk shown in that exhibit?

A. Yes, sir.

Q. Was the construction of that fence similar

(Testimony of Clayton Dykeman.)

to that which you have described for the fences in the project? A. The same. [322]

Q. Now, was there any fence along the other side of that same walk, Mr. Dykeman?

A. There was not.

Q. That is during the period you have referred to?

A. At the time I was there, there was no fence out south side of the walk.

Q. That is on the side closest to the building?

A. That is right.

Q. You are referring to Exhibit A-2?

A. Yes.

Mr. Bateman: You may inquire.

Cross Examination

Q. (By Mr. Guimont): Mr. Dykeman, did you make any repairs to any fence in that area at any time between November 1 and November 5?

A. Well, I made repairs every day where it needed it, but I wouldn't say that that fence was down at that time.

Q. You can't recall whether it was down or not? A. No.

Q. If it had been down—you say that you went by the area?

A. I went right by there every day. [323]

Q. And you would have repaired it?

A. Right.

Q. Would you recall how the wire was attached at the point of that parking strip that is shaded,

(Testimony of Clayton Dykeman.)

and I believe it is on the north of the walk shown on Exhibit A-1. There is a telephone pole in that parking strip.

A. Yes, it was hooked on the telephone pole, and run back to the play pen on the—next to the building there, and then it went along this lawn clear out to the street on the north side there of the lawn.

The Court: Are you describing the course?

The Witness: Of the fence.

The Court: And the attachments of the wire in the fence?

The Witness: Yes. It was hooked to this telephone pole here and this play pen fence back at the back of the building.

Q. (By Mr. Guimont): It didn't cross the sidewalk, did it? A. No, it did not.

Q. It circled the parking strip area, but it was hooked onto the pole? A. That is right.

Q. Now, do you recall ever mending it when it [324] was detached from the pole?

A. Yes, yes. I would say it has been down.

Q. Now, just when was it that you repaired it after it had been detached from the pole?

A. Oh, I couldn't tell that.

Q. Did you know of anyone having fallen over the wire? A. I did not.

Q. You never were told or informed?

A. No, I didn't know anything about it, unless just shortly.

Q. Just shortly? A. Yeah.

(Testimony of Clayton Dykeman.)

Q. When did you finish your employment with them? A. November 15.

Q. Of 1952? A. Right.

Q. And did you, just before your termination of employment with them, make any repairs to that area? A. Up to the last day.

Q. In that particular area? A. All of it.

Q. Do you recall up to the very termination of your employment repairing that area?

A. No. Not—— [325]

Q. And attached the wire to the telephone pole again? A. No, not necessarily.

Q. You can't say one way or the other?

A. No.

Q. But you did from time to time?

A. I repaired it every day that I went around that it was down.

Q. Every day it was down?

A. No, every day that it was down.

Q. You recall now about how often it was down?

A. Oh, not too often, because that had pretty good bearings.

Q. What type of staple did you use?

A. Well, oh, a staple about the size of the wire, or a little heavier.

Q. And in using that staple, were you driving it in on the end of the wire, that is where you were tying the end of the wire, or something; what kind of a knot or——

A. Oh, we would wrap it around the stake a couple of times and then staple it.

(Testimony of Clayton Dykeman.)

Q. Were you instructed at any time to attach any ribbons to the wires? [326]

A. Well, there was twine on the wire when I took over—at certain places.

Q. Were you instructed to continue it?

A. No, I didn't.

Q. What would be the purpose of having the twine? A. Sir?

Q. What would be the purpose of having the twine?

A. Well, so they could see the wire better.

Q. As a warning?

A. Warning, that is right.

Q. Would you consider that a proper way of giving warning?

A. Well, I think it was very necessary until they got adjusted to the fence.

Q. Did you believe that, with the fences down every morning when you went around there, that they had become adjusted to the fences up to the time that you left there?

A. No, not entirely, because some of them didn't respect the fences.

Q. Did you have occasion in your travelling on the repair route to find the wires askew or across the sidewalks? [327]

A. Oh, there were times, yes, that it was drawn across the sidewalk.

Q. Would they be visible at night, in your opinion?

(Testimony of Clayton Dykeman.)

A. Well, I think it is lighted well enough so they could see them.

Q. You would say that with respect to all areas?

A. Yes, sir.

Q. Did you travel around in the evening out there at all? A. Not after 4:30.

Q. So that your experience then is only during daylight hours on a project?

A. That is right.

Mr. Guimont: That is all.

Redirect Examination

Q. (By Mr. Bateman): Have you ever been on the project during the evening hours?

A. Yes.

Mr. Bateman: No further questions.

The Court: You may step down.

(Witness excused.)

The Court: Call the next witness. [328]

Mr. Bateman: May it please the Court, Mrs. Wilson.

MARION S. WILSON

upon being called as a witness for and on behalf of the defendants, and upon being first duly sworn, testified as follows:

Direct Examination

Q. (By Mr. Bateman): Will you state your name, please? A. Marion S. Wilson.

Q. Where do you live, Mrs. Wilson?

A. 1165 Southwest 139.

(Testimony of Marion S. Wilson.)

Q. Are you employed?

A. By Lake Burien Heights.

Q. How long have you been employed by that organization?

A. Over six years.

Q. By whom are you employed?

A. By Lake Burien Heights.

Q. In what capacity?

A. Office Manager.

Q. Who is your immediate superior?

A. Mr. Brydon.

Q. What are your duties?

A. Well, directing the work of the office [329] girls, the other girls in the office, taking rents, rentals, tenant complaints, et cetera.

Q. And you have been employed in that capacity since before November 5 of 1952?

A. That is right.

Q. What, if any, method do you have with respect to handling requests from tenants for repairs or of mal conditions of one kind or another?

A. Just merely that when a call comes in, a form, work order form, is made out and put in the back room.

Q. By "in the back room", where do you mean?

A. The maintenance office.

Q. And who is that?

A. Well, under Mr. Suder's jurisdiction.

Q. It is placed on his desk, is it?

A. That is right.

Q. And each one of such calls for repairs or complaints of any nature are so handled?

(Testimony of Marion S. Wilson.)

A. Every call is written up.

Q. What is the situation with respect to the servicing of an area and the street and floodlights in the Lake Burien Heights Project and in the market area at the northeast corner of the project site?

A. It is taken care of by City Light. The [330] line service truck comes out every Monday and takes care of all the light, with which I provide them a list.

Q. Was that the practice on November 5 of 1952? A. Yes, it was.

Q. Do you have any record of the servicing of lights in the area in the project shown on Exhibit A-1?

Could you recognize the area of the project shown on that drawing, Mrs. Wilson?

A. Yes, I recognize it.

Q. Do you have a record of servicing of exterior lights, including the area lights, the street lights, and the floodlights in the market area, for the project during October and November of 1952?

A. Do I have a record?

Q. Yes.

A. I have a record, but there were no lights in that area replaced during that time.

Q. In other words, from your records and your examination of your records, it indicates there were no servicing of lights, et cetera, in October or November of 1952?

A. That is right. [331]

(Testimony of Marion S. Wilson.)

Q. Now, by whom was that servicing performed? A. City Light.

Q. And how frequently?

A. Every Monday morning.

Q. In what manner was that servicing of the lights accomplished?

A. Well, whoever the maintenance man was on duty, on Sunday night, he checked all the street lights, all the area lights, and left a list on my desk for Monday morning.

Q. By the "maintenance man on duty Sunday night", do you mean the night watchman?

A. On Sunday, up until nine o'clock, Mr. Chetkovs is not on duty. There is another man on duty.

Q. And it was his duty to check all of the lights in the area? A. That is right.

Q. And in the regular practice and regular business then that would be placed on your desk to be called to the attention of City Light?

A. That is right.

Q. And do you have here your records which you consulted and determined that there were no lights serviced in that area during those two months? [332]

A. The record that I have would be my desk calendar, where I put down the calls for City Light, designating the pole number of the light, and each month end when the bill came in from City Light, I had to identify that pole number on the monthly bill.

Q. Consequently, because of the practice fol-

(Testimony of Marion S. Wilson.)

lowed with respect to billing on those service calls, you had to be able to identify each and every light that was serviced? A. Yes.

Q. Did you, as office manager, receive a report of the accident to Mrs. Dooley which occurred on November 5, 1952? A. Not directly.

Q. How did notice of that accident first come to your attention?

A. Well, I heard it just in a casual conversation with another tenant.

Q. Do you recall when it was you first heard of it? A. Early in December.

Q. Do you know of anyone else in your office or on the staff who heard of that at any earlier date? A. No, they did not. [333]

Mr. Bateman: You may inquire.

Cross Examination

Q. (By Mr. Guimont): Mrs. Wilson, when you first heard of it, was Mrs. Dooley in the hospital?

A. I have no way of knowing.

Q. You did discuss the matter with Mrs. Dooley later, did you not?

A. Not until late in December—I think I was—I called her to ask the particulars. That was the first that I personally talked to Mrs. Dooley about it.

Q. And was she in a cast then?

A. I think she was.

Q. Now, do you know of other complaints you had of people injured in the area over the years?

(Testimony of Marion S. Wilson.)

A. Only the report that ever came in to us.

Q. Was that a report you received from the beauty operator? A. From the where?

Q. From the woman who was running the beauty shop

A. No. That was how I learned about Mrs. Dooley's accident.

Q. Was that report that you received notice of [334] another accident?

A. Much earlier than that. It was probably back when the fences were first up.

Q. Did you receive many complaints from the tenants with respect to these wires being down?

A. No. Occasionally, we did.

Q. And did you receive any complaints from visitors about it?

A. No, never from visitors, to my knowledge.

Q. Did you walk about the project yourself from time to time? A. Yes.

Q. And in your walking through the project, did you yourself observe the fences down?

A. I think on one or two occasions, I did.

Q. And about when with respect to November 4, 1952? A. I couldn't say.

Q. Was it before or after?

A. I couldn't say.

Mr. Guimont: I believe that will be all.

Redirect Examination

Q. (By Mr. Bateman): May I ask, Mrs. Wilson, have you ever had occasion to ascertain how

(Testimony of Marion S. Wilson.)

lowed with respect to billing on those service calls, you had to be able to identify each and every light that was serviced? A. Yes.

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(Testimony of Marion S. Wilson.)

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Q. And about when with respect to November 5, 1952? A. I couldn't say.

Q. Was it before or after?

A. I couldn't say.

Mr. Guimont: I believe that will be all.

Redirect Examination

Q. (By Mr. Bateman): May I ask, Mrs. Wilson, have you ever had occasion to ascertain how

(Testimony of Marion S. Wilson.)

many children live in the [335] project area in the apartments?

A. Oh, yes; about once a year, we take a count. It usually runs between 650 and 700.

Q. Mrs. Wilson, do you yourself live in one of the apartments? A. Yes, I do.

Q. In the project? A. Yes.

Q. And you have occasion to come and go in the evening then many times?

A. Yes, quite frequently I do.

Q. Do you have any trouble seeing, as you pass along the sidewalks in the area?

A. No.

Mr. Bateman: No further questions.

Mr. Guimont: No questions.

The Court: Step down, please.

(Witness excused.)

The Court: Call the next witness.

Mr. Bateman: May it please the Court, the Defendants rest.

The Court: Any rebuttal?

Mr. Guimont: Just a few questions.

Mr. Bateman: May I interrupt the Court, please? [336]

May the several witnesses for the Defendants who have testified be excused, Mrs. Wilson, Mr. Suder, Mr. Brydon?

The Court: Any objection?

Mr. Guimont: No objection.

The Court: They are excused.

Now, you may proceed.

Mr. Guimont: Your Honor, there are two exhibits that we have identified that I would like to have admitted. I don't believe that there is any objection to Plaintiff's Exhibit 7.

Mr. Bateman: No objection.

The Court: It is now admitted.

(Plaintiffs' Exhibit 7 received in evidence.)

The Court: There is also a smaller one, a small photograph, Plaintiffs' Exhibit 1.

Mr. Guimont: No objection, your Honor.

Mr. Bateman: No objection, your Honor.

The Court: It is admitted.

(Plaintiffs' Exhibit 1 received in evidence.)

JEAN DOOLEY

upon being called as a rebuttal witness for and on her own behalf, and having been previously sworn, testified further as follows:

Direct Examination

Q. (By Mr. Guimont): Mrs. Dooley, do you recall whether you didn't make a report to Mrs. Wilson of your accident?

A. I recall the date, exactly. It was my first trip off the bed. It was two days after I returned home from the hospital, which would have been about eleven days past November 5.

Q. Would that be the 16th?

A. That would have been November 16.

Q. Now, was she aware then of the fact that you had an accident? A. Yes.

As I told her, she said, "I heard you fell down

(Testimony of Jean Dooley.)

the front steps." I corrected her there. She called me back in about two hours and said she had to make out an official accident report, and give all the details.

Q. And you gave them to her?

A. Yes, the time of day and all the particulars.

Q. Now, did you go out to the project last evening [338] and, at the area where you fell, check the lighting facilities?

A. Yes, I went last night. I was curious about the floodlights which were mentioned which I had never before observed, and I had observed this spot at night on several other occasions.

Q. Did you observe those lights last night, floodlights?

A. There were supposedly some floodlights attached to the building, the back of the grocery stores, the buildings there, the shopping center, and if they were there, they weren't on, but it was dark, and I couldn't see if there were any there, and then there were a pair of twin floodlights so far away over at Anbaum Road, and the light just didn't affect this spot at all.

Q. Did you observe last night the visibility emanating from the light that is attached to the building west of your building and where you used to live?

A. Yes, I did. There wasn't adequate light there, —although, last night the situation there was lighter than it was the night I fell, but there was bedroom windows about ten feet from this spot,

(Testimony of Jean Dooley.)

and the lights there happened to be on, and also the light coming from a basement across the other side of the walk [339] happened to be on, which weren't on that particular night, so I really couldn't estimate that.

Q. The walkway area, is it obscured by any shadow?

A. Yes. There is a shadow of this wire fence. It makes a lacework pattern. It is a chain-like fence, is what it is. I would call it that. It makes a lacework pattern on about four-fifths of the walk, and then the rail that is on top—I don't know how big that is in size,—but it magnifies the shadow on about six inches across the walk.

Q. Was that shadow approximately where you fell?

A. Approximately, yes.

Mr. Guimont: I believe that will be all.

Cross Examination

Q. (By Mr. Bateman): Mrs. Dooley, the first shadow you referred to as being four-fifths, covering four-fifths of the sidewalk?

A. Yes, coming from, it was the main sidewalk, the one going north and south.

Q. The north and south sidewalk?

A. Yes.

Q. Well, now, that is not the sidewalk you [340] were walking on, is it?

A. I had either approached the spot, or was about to. I have never been sure just about the spot I was there.

(Testimony of Jean Dooley.)

Q. But you stumbled, I think you said, about two large steps before you came opposite that telephone pole, did you not?

A. I don't recall that.

Q. Isn't that what you testified to?

A. I don't recall having said it. I was in the middle of the sidewalk and I did stumble a few times before I fell, but I don't think I have ever been able—I don't think I have ever been clear as to the exact spot. I have always said, "approximately", because, to this day, I don't know the exact spot. It was in the middle of the sidewalk at the corner. And the "approximate" couldn't vary more than a foot.

Q. Well, then, you don't know whether you stumbled in this shadow cast by a rail, did you call it?

A. I don't know that I stumbled in the shadow. I don't know that this particular light was on to make a shadow the night I fell.

Q. Did you just testify that you thought that where that rail cast a shadow was about where you fell? [341]

A. Approximately the spot where I fell.

Q. But now, you state that you can't say within two large steps whether you fell to one side of that pole or to the other?

A. I fell on the corner, where the sidewalk makes its turn, I fell there.

Q. Now, didn't you testify yesterday that you

(Testimony of Jean Dooley.)

stumbled about two large steps before reaching that telephone pole?

A. I don't know how the pole entered into it, but I stumbled a couple of times before I fell. But I was aware I was going to fall.

Q. Now, the first time you stumbled, it was because you had contacted something?

A. I felt myself entangled in wire.

Q. Were you turning then? A. No.

Q. You weren't turning then when you first stumbled?

A. I was walking rapidly, and I was—oh, do you mean, was I turning a corner yet?

I have never been sure as to that. Either I was going to in the next step, or was in the process of—I don't know.

Q. You don't know whether you were turning [342] or not, then?

A. Either, I would have within the next step, or I had. I couldn't say.

Q. Well, if you stumbled two large steps to the east of the telephone pole, and were in the act of turning, then you were turning about four or five feet short of the corner, were you not?

A. No. I wasn't. I don't know that I was turning. I mean, what you are saying—I am trying to be cooperative, but I really don't know how to answer that. As I have stated, many times before, I was either going to turn the corner, or was in the process of making that step to turn it, when I stumbled a couple of times and fell. I can't re-

(Testimony of Jean Dooley.)

member that. I was in great pain, and it happened so quickly I couldn't show you the exact spot.

Q. Well, within what limits, within how many feet or how many inches, can you place the spot along the sidewalk where you first stumbled?

A. Well, where I first stumbled was just slightly before I reached the corner to turn. I mean, where I first felt the wire.

Q. Now, how—can you place it within four or five feet of where you stumbled first?

A. Probably. [343]

Q. Well, now, then, will you attempt to do so?

A. Probably. I will try it.

Q. In words?

A. Well, would you repeat the question?

Q. Would you tell me where you were on the sidewalk when you first stumbled on the evening of November 5, 1952?

A. Well, I stumbled. I was still on the sidewalk that goes east and west, and either proceeding to turn the corner that will take me north and south——

Q. I am asking you where you were at the time you first stumbled?

The Court: I think it might be helpful if you put in the question the phrase relating to some object which you think she is familiar with.

Q. (By Mr. Bateman): Mrs. Dooley, you have testified now that you were still on the sidewalk which goes in a generally easterly and westerly direction?

(Testimony of Jean Dooley.)

A. Yes. I was probably alongside the telephone pole.

Q. Well, now, didn't you state yesterday that you stumbled before you reached the telephone pole?

A. No. I stated—I think I stated that I [344] couldn't touch the telephone pole.

Mr. Bateman: May I see Exhibit 1, Plaintiffs' Exhibit 1? It is the large drawing. That is the one that I am interested in.

(Document handed to Mr. Bateman.)

The Court: Let the record show what counsel is looking at.

Mr. Bateman: I am looking at Plaintiffs' Exhibit 5, your Honor. Would you show that to the witness, Mr. Bailiff?

(Plaintiffs' Exhibit 5 handed to the witness.)

Q. (By Mr. Bateman): Mrs. Dooley, do you recall indicating on that drawing where it was you first stumbled? A. Yes.

Q. How did you make that indication?

A. Well, there are two marks here very close together, and as I have said many times, I don't know.

Q. Well, what marks did you place on there?

A. Well, there is a red "X" mark with my initial "J". There is also the numeral "1".

Q. And what was that to indicate?

A. Well, they are so close together, that I wouldn't know, but that is the spot where I began to stumble. [345]

(Testimony of Jean Dooley.)

Q. Well, would you tell me then from that mark where it is that you indicated you first stumbled?

A. Well, the figure "1", I would say.

Q. Where the figure "1" indicates?

A. Yes, or the "X". They are right on each other.

The Court: I ask you to have her state for the record, or give her an opportunity to state in the record, in words, where it was in reference to something.

Q. (By Mr. Bateman): Will you tell me, then, how many feet you were—give me your estimate of how many feet you were east or west of the telephone pole which is shown on that drawing, and in the several pictures.

The Court: At the time of the occurrence of the events stated in the last answer?

Mr. Bateman: Yes, your Honor, at the time she fell when she first stumbled.

A. (Looking at exhibit) If I knew which way east and west was, I could answer that better.

Q. (By Mr. Bateman): Calling your attention to the direction arrows shown on the exhibit, direction notation shown on [346] the left side of the exhibit, Mrs. Dooley, can you orient yourself as to directions on the drawing from that, on the left side?

The Court: You might ask her if she understands the direction towards which the arrow points so that you can verify her understanding of at least what is on the map.

(Testimony of Jean Dooley.)

Q. (By Mr. Bateman): Have you noticed on the exhibit the direction indicator on the left-hand side of the exhibit? A. Yes.

Q. And that indicates "north" to be in which direction? A. To the right.

Q. To the right side of the drawing?

A. That is right.

Q. And "east" would be to the bottom or lower edge of the drawing?

A. Or towards me, yes.

Q. Now, you have located the telephone pole that is situated in the corner of that grass area?

A. Yes, I have.

Q. Now, will you describe, or state, how far in your opinion you were east or west of that telephone pole on the sidewalk running easterly and westerly at [347] the time that you first stumbled?

A. Four feet.

The pole would be four feet further to the north, and about one foot further to the west from the point where I began to stumble.

Q. Then, considering your line of travel, you testified that you had about a foot to go, yet before you came to a point on the walk opposite the telephone pole?

A. No. I don't know what I said, and from this, I am not very good at blueprints. I do know how it happened. I am thoroughly aware of how it happened.

Q. Well, would you tell me, is that correct then, —is that your testimony that you were about a foot

(Testimony of Jean Dooley.)

from reaching a point opposite the telephone pole at the time you first stumbled?

A. And it would be to my north.

Q. Now, Mrs. Dooley, you were walking along the sidewalk in a westerly direction, weren't you?

A. Yes.

Q. And you had walked some 25 or 30 feet along that sidewalk, had you not, before you stumbled? A. I guess——

Q. Approximately? [348] A. Yes.

Q. And you were walking in a westerly direction? A. Yes.

Q. And you were approaching the point on that sidewalk opposite the telephone pole in the corner. Now, is it your testimony that you stumbled approximately one foot before reaching that point on the sidewalk opposite the telephone pole?

A. I think possibly I began to stumble there and maybe made—I didn't make a complete turn. I am not exactly sure of just the next step, what happened then. I was frightened. I knew I was going to fall, and I fell. The telephone pole was to my right, the north, at the time.

Q. And you were walking rapidly then?

A. Yes, I was.

Q. And when you came to a stop, you were within an arm's reach of the telephone pole?

A. No. I couldn't reach it. I could almost. I couldn't reach it, because I had contemplated pulling myself up on it.

Q. Did you reach within six inches of it?

(Testimony of Jean Dooley.)

A. I don't think so. I think two feet, probably.

Q. Were you still on the sidewalk area?

A. Actually, I was rolling and crying. I wasn't in one spot too long.

Q. Well, at any rate, on the sidewalk a foot to the east of the point on the walk immediately opposite that telephone pole, there was no shadow, was there, when you looked last night?

A. To the east of the telephone pole, no. The wire fence didn't make the shadow there.

Q. There was no shadow there?

A. Not in that spot, no.

Mr. Bateman: No further questions.

Mr. Guimont: No further questions.

The Court: I do not see what disposition is made of Plaintiffs' Exhibit 8, which I suspect may be a duplicate of Plaintiffs' Exhibit 1. It is something that was marked, or I have it as marked, and denominated somewhat similarly to what has been admitted.

Is it a duplicate of what has been admitted as Plaintiffs' Exhibit 1?

Mr. Bateman: We have no objection to its admission.

Mr. Guimont: It is just about the same picture.

The Court: Do you offer it in evidence? [350]

Mr. Guimont: We offer it in evidence.

The Court: Is there any objection?

Mr. Bateman: No objection, your Honor.

The Court: Plaintiffs' Exhibit No. 8 is now admitted.

(Plaintiffs' Exhibit 8 received in evidence.)

The Court: Call the next witness.

Mr. Guimont: We rest, your Honor.

The Court: The Plaintiff rests.

Is there any sur-rebuttal?

Mr. Bateman: No, your Honor.

The Court: Do the Defendants rest?

Mr. Bateman: The Defendants rest.

The Court: How much time do counsel wish to argue this on each side of this case on the merits?

Mr. Guimont: Fifteen minutes, your Honor.

The Court: Well, that is a pretty short time, I think, especially for one who might want to divide his argument into an opening and closing argument.

Mr. Bateman: I should like, if the Court please, somewhat longer. I should like to argue the law somewhat as well as the evidence.

The Court: Well, I think it is the law of negligence, isn't it? [351]

It is a question of fact as to whether the Defendant was negligent, and that caused the damages related here.

Each case is pretty much its own law, is it not, as to what constitutes negligence, and whether or not the facts and the surrounding—

Mr. Bateman: Well, there is a further aspect, I believe, of this question, your Honor, and that pertains to the status of the party. There is the question of the right and propriety of the defendants in maintaining the fences.

The Court: How much time do you think you ought to have?

Mr. Bateman: I should like, your Honor, to have a half hour to 35 minutes.

The Court: Each side is given thirty minutes, and the Plaintiffs' argument may be divided between opening and closing arguments in any manner Plaintiffs' counsel wishes, and we will have the arguments in the morning.

Mr. Guimont: In the morning?

The Court: Yes. We will begin at ten o'clock tomorrow morning. Court is now adjourned until that time.

(At 5:00 o'clock p.m., Thursday, March [352] 11, 1954, proceedings recessed until 10:00 o'clock a.m. Friday, March 12, 1954.)

Seattle, Wash., March 12, 1954, 10:00 o'clock a.m.

The Court: I wish to hear counsel in the argument on the Dooley matter now.

(Arguments made by counsel on behalf of Plaintiffs and Defendants.)

The Court: From a preponderance of the evidence in this case, the Court finds, concludes and decides as follows:

That the plaintiffs have sustained the burden of proof as to each and all of the material allegations of their complaint concerning the alleged negligence of the defendants and the alleged due and reasonable care on the part of the plaintiff wife, Mrs. Jean Dooley;

That, in particular, the defendants were negligent in failing to maintain the sidewalk in a reasonably safe condition and in failure to exercise reasonable care in providing assistants whose duty it was to keep the condition of the sidewalk reasonably [353] safe at all times material to this action;

That the Court does not believe that there is a convincing showing or a showing by a preponderance of the evidence or any showing at all on the part of the defendants or anyone else in this case that a particular individual did actually make or that any individual acting for or on behalf of the defendants made an inspection of the premises near the place of the accident between the time the defendants' employee Dykeman ended his day's work and the time of the occurrence of this accident;

That the accident occurred while the plaintiff, Jean Dooley, was walking in a hurry along and on the surface of the sidewalk when loose and disarranged fencing wire or barricade fencing wire was in a loosened and strewn condition upon the surface of the sidewalk where the plaintiff Jean Dooley then was, as of right, walking;

The Court makes that finding notwithstanding the testimony of Dr. Ruuska regarding the detail of what he understood plaintiff stated to him in connection with her relating to the Doctor the history of the occurrence of the accident;

That, as the fact-trier in this case having during the trial applied all known tests which a fact-trier [354] may properly apply on the question of cred-

ibility and weight of testimony and truthfulness of witnesses, I do not find anything at all in the testimony of that party, Mrs. Jean Dooley, while she was on the witness stand as a witness either in the story of the events connected with the accident related by her or in her manner of testifying, which in any way causes the Court to believe or suspect that she was not telling the truth on the witness stand, and I believe she then did tell the truth;

That it might be observed, I think fairly, that sometimes Doctors on writing down the case history given to them by their patients may not have time for and may not take the trouble to record with particularity each and every detail of the story which was or, after further interrogation, might have been related to them by the patient. It is possible that Mrs. Dooley, the plaintiff wife in this action, might have said in a general way in response to some question of the Doctor that this was a wire among those stretched as barricade wires between stakes, without thereby tending to contradict the more essential factual detail, stated by her on the witness stand, during the trial, that the wire at the time she was walking along the sidewalk was then and there in a strewn [355] condition along and upon that sidewalk where she was walking;

That the Court finds, concludes and decides from a preponderance of the evidence that the plaintiff Jean Dooley was exercising due and ordinary care for her own safety and was not guilty of contribu-

tory negligence at the time of the accident. This Court finds notwithstanding the fact that she frankly said she was walking in a hurry without any particular reason in her mind compelling that hurry, but the duty of the defendants to maintain this sidewalk in a reasonably careful manner and in a reasonably careful and safe condition for use by persons does not exclude persons walking in a hurry. When they are exercising reasonable care for their own safety includes those in a hurry as well as those not walking in a hurry. Persons in the ordinary course of life's activities frequently use sidewalks while walking in a hurry as well as when walking not in a hurry, and in using sidewalks while walking in a hurry, they are not by reason of the hurrying in and of itself failing to exercise due and ordinary care for their own safety;

That the personal injuries and damages as alleged in plaintiffs' complaint to have been sustained by the plaintiff Jean Dooley were in fact [356] sustained and proximately resulted from the negligence of the defendants;

That considering the extent of the physical injuries to the knee and kneecap of the plaintiff Jean Dooley and the medical history of her condition following the injury, the length of the time her leg was in a cast, the length of time she had the health symptoms in relationship to the unborn child with which she was concerned during the time, considering the generally successful results of the surgery in respect to reduction of the frac-

ture of the kneecap, considering the roughened surface which is said to be present now on the underside of the kneecap, considering the atrophy in the muscles of the leg on which the fractured kneecap was, considering the direct physical injuries and damages sustained by the plaintiff Jean Dooley to the kneecap, knee joint and leg, and considering the medical expenses, hospital bills and medicines already incurred and those which reasonably will be incurred as a proximate cause of the accident here involved, considering the necessity which the plaintiff experienced in having assistance in their home work and the reasonableness of the cost thereof, in which connection the Court has in mind the assistance rendered by Mrs. Dorothy Dooley, the mother-in-law of the [357] plaintiff Jean Dooley and the mother of plaintiff Richard Dooley, considering each and all of the injuries and damages proximately resulting to plaintiffs from the defendants' negligence as alleged in this action, considering each and all of the foregoing items specifically discussed and all of the evidence and arguments received by the Court relating thereto, the Court does find, conclude and decide that plaintiffs are entitled to recover of and from the defendants and each and all of them the total sum of Five Thousand Dollars (\$5,000.00) together with plaintiffs' taxable costs herein to be taxed in plaintiffs' favor against the defendants.

When would counsel like to meet with the Court to settle and enter proper findings of fact and conclusions of law and judgment in this matter?

Mr. Guimont: Could we do that next week, your Honor?

The Court: Could you do it on Wednesday, the 17th, at 11:00 o'clock in the forenoon?

Mr. Guimont: Your Honor, I have a divorce trial.

The Court: Can you do it on Thursday, the 18th, at 10:00 o'clock in the forenoon?

Mr. Guimont: Yes, your Honor. [358]

Mr. Bateman: May it please the Court, I plan to be in Aberdeen that day to take depositions.

The Court: Can you do it on Friday, the 19th?

Mr. Bateman: I believe that will be satisfactory.

Mr. Guimont: I can do it, also.

The Court: Mr. Cushman, is that agreeable to you?

Mr. Cushman: Yes, your Honor.

The Court: This matter is continued until Friday, March 19th, at 10:00 o'clock in the forenoon for the purposes mentioned.

Is there any issue in this case necessary to final disposition thereof not disposed of already by the Court's tentatively announced oral decision just announced?

Mr. Guimont: The only matter may be that this is a tort claims action against the United States as well as——

The Court: You mean the attorneys' fees?

Mr. Guimont: Yes, I didn't know——

The Court: Well, of course, that should be determined by the Court, but any award made for attorneys' fees must, by statutory requirement, be

paid out of the total recovery of the kind just orally announced in this case. [359]

Mr. Guimont: Yes, I understand that, your Honor.

The Court: It cannot be in addition to that sum. In that connection do you think your clients would be willing to make a statement as to what amount or what percentage would be proper for the Court to allow the plaintiffs' counsel in this case? You may discuss it with your clients if you wish, or if there is something else you wish to discuss with counsel in the case about this matter of fixing plaintiffs' attorneys' fees, you may do that.

Mr. Guimont: If I may do that, your Honor.

(At this time, Mr. Guimont conferred briefly with Plaintiffs.)

The Court: Mr. Bateman, if you think there is some other issue not disposed of by the Court's oral decision tentatively announced, you will be given an opportunity to discuss it after Mr. Guimont has finished.

Mr. Guimont: Your Honor, in that matter, the statute I believe provides for a maximum of twenty per cent of the recovery, and my clients indicate that that will be satisfactory.

The Court: I ask Mr. Dooley and his wife, Mrs. Jean Dooley, do you approve of the Court's awarding [360] to Mr. Guimont out of this recovery just announced; if that is the recovery finally passed into judgment by the Court, is it agreeable to each of the plaintiffs that the Court award out of that principal sum of Five Thousand Dollars (\$5,000.00)

twenty per cent thereof for Mr. Guimont's attorneys' fees in this case?

Mrs. Dooley: That is agreeable.

Mr. Dooley: That is agreeable.

The Court: Mr. Guimont, do you think that you have earned twenty per cent in this case?

Mr. Guimont: Your Honor, I feel that I have. It is a contingency case, Your Honor, and we have been two and a half days in trial. There was considerable preparation in advance of trial, and I feel that that would be a fair fee, a reasonable fee.

The Court: Does anyone connected with the case have a different thought? Does any other person have a different thought about what would be reasonable for the plaintiffs as a reasonable attorneys' fee as an allowance to plaintiffs' attorneys to be paid out of the judgment?

(No reply.)

The Court: The Court then finds, concludes and decides that twenty per cent of the Five Thousand Dollars, if that is entered in the judgment finally [361] would be, and is, a reasonable sum to be awarded, and the Court does award that sum as plaintiffs' attorneys' fees, which attorneys' fees in said amount shall be paid out of the principal recovery to be allowed by the Court as entered in the judgment in this case.

Mr. Guimont: Thank you, your Honor.

The Court: Mr. Bateman, do you think there is any material issue presented by the pleadings in this case which has not been disposed of by the Court's tentatively announced oral decision?

Mr. Bateman: I know of none at this time, your Honor.

The Court: The Court is now in recess until two o'clock and those connected with this trial are excused until the date previously announced, which is to be next week.

(At 12:00 o'clock noon, Friday, March 12, 1954, trial proceedings concluded.) [362]

[Endorsed]: Filed May 25, 1954.

[Endorsed]: No. 14,390. United States Court of Appeals for the Ninth Circuit. United States of America, and Carroll, Hedlund & Associates, Inc., a Washington Corporation, Appellants, vs. Richard E. Dooley, and Jean Dooley, his wife, Appellees. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Northern Division.

Filed: June 12, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14390

UNITED STATES OF AMERICA, and CAR-
ROLL, HEDLUND & ASSOCIATES, INC.,
a Washington corporation, Appellants,

vs.

RICHARD E. DOOLEY and JEAN DOOLEY,
his wife, Appellees.

APPELLANTS' ADOPTION OF POINTS ON
APPEAL, FILED IN THE UNITED STATES
DISTRICT COURT

Come now United States of America and Car-
roll, Hedlund & Associates, Inc., a Washington cor-
poration, appellants herein, and adopt for appel-
lants' statement of points on appeal, the Statement
of Points on Appeal filed by appellants in the
United States District Court, document number 25,
Original Certified Record.

/s/ A. T. BATEMAN,

Of Brethorst, Fowler, Dewar, Bate-
man & Reed

/s/ F. N. CUSHMAN,

Assistant U. S. Attorney,
Attorneys for Appellants

[Endorsed]: Filed June 17, 1954. Paul P. O'Brien,
Clerk.

[Title of U. S. Court of Appeals and Cause.]

APPLICATION FOR PERMISSION TO DIS-
PENSE WITH PRINTING OF EXHIBITS
AND FOR CONSIDERATION THEREOF
IN ORIGINAL FORM

Come now the appellants, United States of America and Carroll, Hedlund & Associates, Inc., a Washington corporation, and apply to the Court for permission to dispense with printing of the following exhibits:

Plaintiffs' (appellees herein) Exhibits 1, 5, 7 and 8; Defendants' (appellants herein) Exhibits A-1, A-2, A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10, A-11, A-12 and A-16; and request that said exhibits be considered by the Court in their original form.

/s/ A. T. BATEMAN,

Of Brethorst, Fowler, Dewar, Bate-
man & Reed

/s/ F. N. CUSHMAN,

Assistant U. S. Attorney,
Attorneys for Appellants

State of Washington,
County of King—ss.

A. T. Bateman, being first duly sworn, upon oath deposes and says:

That he is one of the attorneys herein for the appellants and makes this affidavit in support of appellants' application for permission to dispense with printing of certain of the exhibits herein and

for consideration of said exhibits in their original form.

That plaintiffs' (appellees herein) Exhibits 1, 7 and 8 are photographs and appellees' Exhibit 5 is a scale drawing or diagram. That defendants' (appellants herein) Exhibits A-1 and A-2 are scale drawings or diagrams, and that defendants' (appellants herein) Exhibits A-3, A-4, A-5, A-6, A-7, A-8, A-9, A-10, A-11 and A-12 are photographs. That defendants' (appellants herein) Exhibit A-16 is a wire specimen. That said exhibits are not of a printable type.

/s/ A. T. BATEMAN

Subscribed and sworn to before me this 12th day of June, 1954.

[Seal] /s/ RICHARD C. REED,
Notary Public in and for the State of Washington,
residing at Seattle.

[Endorsed]: Filed June 17, 1954. Paul P. O'Brien,
Clerk.